

HB 3317 - S COMM AMD  
By Committee on Judiciary

ADOPTED AS AMENDED 03/07/06

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 46.61.502 and 1998 c 213 s 3 are each amended to read  
4 as follows:

5 (1) A person is guilty of driving while under the influence of  
6 intoxicating liquor or any drug if the person drives a vehicle within  
7 this state:

8 (a) And the person has, within two hours after driving, an alcohol  
9 concentration of 0.08 or higher as shown by analysis of the person's  
10 breath or blood made under RCW 46.61.506; or

11 (b) While the person is under the influence of or affected by  
12 intoxicating liquor or any drug; or

13 (c) While the person is under the combined influence of or affected  
14 by intoxicating liquor and any drug.

15 (2) The fact that a person charged with a violation of this section  
16 is or has been entitled to use a drug under the laws of this state  
17 shall not constitute a defense against a charge of violating this  
18 section.

19 (3) It is an affirmative defense to a violation of subsection  
20 (1)(a) of this section which the defendant must prove by a  
21 preponderance of the evidence that the defendant consumed a sufficient  
22 quantity of alcohol after the time of driving and before the  
23 administration of an analysis of the person's breath or blood to cause  
24 the defendant's alcohol concentration to be 0.08 or more within two  
25 hours after driving. The court shall not admit evidence of this  
26 defense unless the defendant notifies the prosecution prior to the  
27 omnibus or pretrial hearing in the case of the defendant's intent to  
28 assert the affirmative defense.

29 (4) Analyses of blood or breath samples obtained more than two  
30 hours after the alleged driving may be used as evidence that within two

1 hours of the alleged driving, a person had an alcohol concentration of  
2 0.08 or more in violation of subsection (1)(a) of this section, and in  
3 any case in which the analysis shows an alcohol concentration above  
4 0.00 may be used as evidence that a person was under the influence of  
5 or affected by intoxicating liquor or any drug in violation of  
6 subsection (1)(b) or (c) of this section.

7 (5) Except as provided in subsection (6) of this section, a  
8 violation of this section is a gross misdemeanor.

9 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
10 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
11 four or more prior offenses within ten years as defined in RCW  
12 46.61.5055; or (b) the person has ever previously been convicted of  
13 vehicular homicide while under the influence of intoxicating liquor or  
14 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the  
15 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

16 **Sec. 2.** RCW 46.61.504 and 1998 c 213 s 5 are each amended to read  
17 as follows:

18 (1) A person is guilty of being in actual physical control of a  
19 motor vehicle while under the influence of intoxicating liquor or any  
20 drug if the person has actual physical control of a vehicle within this  
21 state:

22 (a) And the person has, within two hours after being in actual  
23 physical control of the vehicle, an alcohol concentration of 0.08 or  
24 higher as shown by analysis of the person's breath or blood made under  
25 RCW 46.61.506; or

26 (b) While the person is under the influence of or affected by  
27 intoxicating liquor or any drug; or

28 (c) While the person is under the combined influence of or affected  
29 by intoxicating liquor and any drug.

30 (2) The fact that a person charged with a violation of this section  
31 is or has been entitled to use a drug under the laws of this state does  
32 not constitute a defense against any charge of violating this section.  
33 No person may be convicted under this section if, prior to being  
34 pursued by a law enforcement officer, the person has moved the vehicle  
35 safely off the roadway.

36 (3) It is an affirmative defense to a violation of subsection  
37 (1)(a) of this section which the defendant must prove by a

1 preponderance of the evidence that the defendant consumed a sufficient  
2 quantity of alcohol after the time of being in actual physical control  
3 of the vehicle and before the administration of an analysis of the  
4 person's breath or blood to cause the defendant's alcohol concentration  
5 to be 0.08 or more within two hours after being in such control. The  
6 court shall not admit evidence of this defense unless the defendant  
7 notifies the prosecution prior to the omnibus or pretrial hearing in  
8 the case of the defendant's intent to assert the affirmative defense.

9 (4) Analyses of blood or breath samples obtained more than two  
10 hours after the alleged being in actual physical control of a vehicle  
11 may be used as evidence that within two hours of the alleged being in  
12 such control, a person had an alcohol concentration of 0.08 or more in  
13 violation of subsection (1)(a) of this section, and in any case in  
14 which the analysis shows an alcohol concentration above 0.00 may be  
15 used as evidence that a person was under the influence of or affected  
16 by intoxicating liquor or any drug in violation of subsection (1)(b) or  
17 (c) of this section.

18 (5) Except as provided in subsection (6) of this section, a  
19 violation of this section is a gross misdemeanor.

20 (6) It is a class C felony punishable under chapter 9.94A RCW, or  
21 chapter 13.40 RCW if the person is a juvenile, if: (a) The person has  
22 four or more prior offenses within ten years as defined in RCW  
23 46.61.5055; or (b) the person has ever previously been convicted of  
24 vehicular homicide while under the influence of intoxicating liquor or  
25 any drug, RCW 46.61.520(1)(a), or vehicular assault while under the  
26 influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b).

27 **Sec. 3.** RCW 46.61.5055 and 2004 c 95 s 13 are each amended to read  
28 as follows:

29 (1) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
30 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
31 and who has no prior offense within seven years shall be punished as  
32 follows:

33 (a) In the case of a person whose alcohol concentration was less  
34 than 0.15, or for whom for reasons other than the person's refusal to  
35 take a test offered pursuant to RCW 46.20.308 there is no test result  
36 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than one day nor more than one  
2 year. Twenty-four consecutive hours of the imprisonment may not be  
3 suspended or deferred unless the court finds that the imposition of  
4 this mandatory minimum sentence would impose a substantial risk to the  
5 offender's physical or mental well-being. Whenever the mandatory  
6 minimum sentence is suspended or deferred, the court shall state in  
7 writing the reason for granting the suspension or deferral and the  
8 facts upon which the suspension or deferral is based. In lieu of the  
9 mandatory minimum term of imprisonment required under this subsection  
10 (1)(a)(i), the court may order not less than fifteen days of electronic  
11 home monitoring. The offender shall pay the cost of electronic home  
12 monitoring. The county or municipality in which the penalty is being  
13 imposed shall determine the cost. The court may also require the  
14 offender's electronic home monitoring device to include an alcohol  
15 detection breathalyzer, and the court may restrict the amount of  
16 alcohol the offender may consume during the time the offender is on  
17 electronic home monitoring; and

18 (ii) By a fine of not less than three hundred fifty dollars nor  
19 more than five thousand dollars. Three hundred fifty dollars of the  
20 fine may not be suspended or deferred unless the court finds the  
21 offender to be indigent; or

22 (b) In the case of a person whose alcohol concentration was at  
23 least 0.15, or for whom by reason of the person's refusal to take a  
24 test offered pursuant to RCW 46.20.308 there is no test result  
25 indicating the person's alcohol concentration:

26 (i) By imprisonment for not less than two days nor more than one  
27 year. Two consecutive days of the imprisonment may not be suspended or  
28 deferred unless the court finds that the imposition of this mandatory  
29 minimum sentence would impose a substantial risk to the offender's  
30 physical or mental well-being. Whenever the mandatory minimum sentence  
31 is suspended or deferred, the court shall state in writing the reason  
32 for granting the suspension or deferral and the facts upon which the  
33 suspension or deferral is based. In lieu of the mandatory minimum term  
34 of imprisonment required under this subsection (1)(b)(i), the court may  
35 order not less than thirty days of electronic home monitoring. The  
36 offender shall pay the cost of electronic home monitoring. The county  
37 or municipality in which the penalty is being imposed shall determine  
38 the cost. The court may also require the offender's electronic home

1 monitoring device to include an alcohol detection breathalyzer, and the  
2 court may restrict the amount of alcohol the offender may consume  
3 during the time the offender is on electronic home monitoring; and

4 (ii) By a fine of not less than five hundred dollars nor more than  
5 five thousand dollars. Five hundred dollars of the fine may not be  
6 suspended or deferred unless the court finds the offender to be  
7 indigent.

8 (2) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
9 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
10 and who has one prior offense within seven years shall be punished as  
11 follows:

12 (a) In the case of a person whose alcohol concentration was less  
13 than 0.15, or for whom for reasons other than the person's refusal to  
14 take a test offered pursuant to RCW 46.20.308 there is no test result  
15 indicating the person's alcohol concentration:

16 (i) By imprisonment for not less than thirty days nor more than one  
17 year and sixty days of electronic home monitoring. The offender shall  
18 pay for the cost of the electronic monitoring. The county or  
19 municipality where the penalty is being imposed shall determine the  
20 cost. The court may also require the offender's electronic home  
21 monitoring device include an alcohol detection breathalyzer, and may  
22 restrict the amount of alcohol the offender may consume during the time  
23 the offender is on electronic home monitoring. Thirty days of  
24 imprisonment and sixty days of electronic home monitoring may not be  
25 suspended or deferred unless the court finds that the imposition of  
26 this mandatory minimum sentence would impose a substantial risk to the  
27 offender's physical or mental well-being. Whenever the mandatory  
28 minimum sentence is suspended or deferred, the court shall state in  
29 writing the reason for granting the suspension or deferral and the  
30 facts upon which the suspension or deferral is based; and

31 (ii) By a fine of not less than five hundred dollars nor more than  
32 five thousand dollars. Five hundred dollars of the fine may not be  
33 suspended or deferred unless the court finds the offender to be  
34 indigent; or

35 (b) In the case of a person whose alcohol concentration was at  
36 least 0.15, or for whom by reason of the person's refusal to take a  
37 test offered pursuant to RCW 46.20.308 there is no test result  
38 indicating the person's alcohol concentration:

1 (i) By imprisonment for not less than forty-five days nor more than  
2 one year and ninety days of electronic home monitoring. The offender  
3 shall pay for the cost of the electronic monitoring. The county or  
4 municipality where the penalty is being imposed shall determine the  
5 cost. The court may also require the offender's electronic home  
6 monitoring device include an alcohol detection breathalyzer, and may  
7 restrict the amount of alcohol the offender may consume during the time  
8 the offender is on electronic home monitoring. Forty-five days of  
9 imprisonment and ninety days of electronic home monitoring may not be  
10 suspended or deferred unless the court finds that the imposition of  
11 this mandatory minimum sentence would impose a substantial risk to the  
12 offender's physical or mental well-being. Whenever the mandatory  
13 minimum sentence is suspended or deferred, the court shall state in  
14 writing the reason for granting the suspension or deferral and the  
15 facts upon which the suspension or deferral is based; and

16 (ii) By a fine of not less than seven hundred fifty dollars nor  
17 more than five thousand dollars. Seven hundred fifty dollars of the  
18 fine may not be suspended or deferred unless the court finds the  
19 offender to be indigent.

20 (3) Except as provided in RCW 46.61.502(6) or 46.61.504(6), a  
21 person who is convicted of a violation of RCW 46.61.502 or 46.61.504  
22 and who has two or (~~more~~) three prior offenses within seven years  
23 shall be punished as follows:

24 (a) In the case of a person whose alcohol concentration was less  
25 than 0.15, or for whom for reasons other than the person's refusal to  
26 take a test offered pursuant to RCW 46.20.308 there is no test result  
27 indicating the person's alcohol concentration:

28 (i) By imprisonment for not less than ninety days nor more than one  
29 year and one hundred twenty days of electronic home monitoring. The  
30 offender shall pay for the cost of the electronic monitoring. The  
31 county or municipality where the penalty is being imposed shall  
32 determine the cost. The court may also require the offender's  
33 electronic home monitoring device include an alcohol detection  
34 breathalyzer, and may restrict the amount of alcohol the offender may  
35 consume during the time the offender is on electronic home monitoring.  
36 Ninety days of imprisonment and one hundred twenty days of electronic  
37 home monitoring may not be suspended or deferred unless the court finds  
38 that the imposition of this mandatory minimum sentence would impose a

1 substantial risk to the offender's physical or mental well-being.  
2 Whenever the mandatory minimum sentence is suspended or deferred, the  
3 court shall state in writing the reason for granting the suspension or  
4 deferral and the facts upon which the suspension or deferral is based;  
5 and

6 (ii) By a fine of not less than one thousand dollars nor more than  
7 five thousand dollars. One thousand dollars of the fine may not be  
8 suspended or deferred unless the court finds the offender to be  
9 indigent; or

10 (b) In the case of a person whose alcohol concentration was at  
11 least 0.15, or for whom by reason of the person's refusal to take a  
12 test offered pursuant to RCW 46.20.308 there is no test result  
13 indicating the person's alcohol concentration:

14 (i) By imprisonment for not less than one hundred twenty days nor  
15 more than one year and one hundred fifty days of electronic home  
16 monitoring. The offender shall pay for the cost of the electronic  
17 monitoring. The county or municipality where the penalty is being  
18 imposed shall determine the cost. The court may also require the  
19 offender's electronic home monitoring device include an alcohol  
20 detection breathalyzer, and may restrict the amount of alcohol the  
21 offender may consume during the time the offender is on electronic home  
22 monitoring. One hundred twenty days of imprisonment and one hundred  
23 fifty days of electronic home monitoring may not be suspended or  
24 deferred unless the court finds that the imposition of this mandatory  
25 minimum sentence would impose a substantial risk to the offender's  
26 physical or mental well-being. Whenever the mandatory minimum sentence  
27 is suspended or deferred, the court shall state in writing the reason  
28 for granting the suspension or deferral and the facts upon which the  
29 suspension or deferral is based; and

30 (ii) By a fine of not less than one thousand five hundred dollars  
31 nor more than five thousand dollars. One thousand five hundred dollars  
32 of the fine may not be suspended or deferred unless the court finds the  
33 offender to be indigent.

34 (4) A person who is convicted of a violation of RCW 46.61.502 or  
35 46.61.504 and who has four or more prior offenses within ten years, or  
36 who has ever previously been convicted of a violation of RCW 46.61.520  
37 committed while under the influence of intoxicating liquor or any drug

1 or RCW 46.61.522 committed while under the influence of intoxicating  
2 liquor or any drug, shall be punished in accordance with chapter 9.94A  
3 RCW.

4 (5) If a person who is convicted of a violation of RCW 46.61.502 or  
5 46.61.504 committed the offense while a passenger under the age of  
6 sixteen was in the vehicle, the court shall:

7 (a) In any case in which the installation and use of an interlock  
8 or other device is not mandatory under RCW 46.20.720 or other law,  
9 order the use of such a device for not less than sixty days following  
10 the restoration of the person's license, permit, or nonresident driving  
11 privileges; and

12 (b) In any case in which the installation and use of such a device  
13 is otherwise mandatory, order the use of such a device for an  
14 additional sixty days.

15 ~~((+5))~~ (6) In exercising its discretion in setting penalties  
16 within the limits allowed by this section, the court shall particularly  
17 consider the following:

18 (a) Whether the person's driving at the time of the offense was  
19 responsible for injury or damage to another or another's property; and

20 (b) Whether at the time of the offense the person was driving or in  
21 physical control of a vehicle with one or more passengers.

22 ~~((+6))~~ (7) An offender punishable under this section is subject to  
23 the alcohol assessment and treatment provisions of RCW 46.61.5056.

24 ~~((+7))~~ (8) The license, permit, or nonresident privilege of a  
25 person convicted of driving or being in physical control of a motor  
26 vehicle while under the influence of intoxicating liquor or drugs must:

27 (a) If the person's alcohol concentration was less than 0.15, or if  
28 for reasons other than the person's refusal to take a test offered  
29 under RCW 46.20.308 there is no test result indicating the person's  
30 alcohol concentration:

31 (i) Where there has been no prior offense within seven years, be  
32 suspended or denied by the department for ninety days;

33 (ii) Where there has been one prior offense within seven years, be  
34 revoked or denied by the department for two years; or

35 (iii) Where there have been two or more prior offenses within seven  
36 years, be revoked or denied by the department for three years;

37 (b) If the person's alcohol concentration was at least 0.15:

1 (i) Where there has been no prior offense within seven years, be  
2 revoked or denied by the department for one year;

3 (ii) Where there has been one prior offense within seven years, be  
4 revoked or denied by the department for nine hundred days; or

5 (iii) Where there have been two or more prior offenses within seven  
6 years, be revoked or denied by the department for four years; or

7 (c) If by reason of the person's refusal to take a test offered  
8 under RCW 46.20.308, there is no test result indicating the person's  
9 alcohol concentration:

10 (i) Where there have been no prior offenses within seven years, be  
11 revoked or denied by the department for two years;

12 (ii) Where there has been one prior offense within seven years, be  
13 revoked or denied by the department for three years; or

14 (iii) Where there have been two or more previous offenses within  
15 seven years, be revoked or denied by the department for four years.

16 The department shall grant credit on a day-for-day basis for any  
17 portion of a suspension, revocation, or denial already served under  
18 this subsection for a suspension, revocation, or denial imposed under  
19 RCW 46.20.3101 arising out of the same incident.

20 For purposes of this subsection (~~((7))~~) (8), the department shall  
21 refer to the driver's record maintained under RCW 46.52.120 when  
22 determining the existence of prior offenses.

23 (~~((8))~~) (9) After expiration of any period of suspension,  
24 revocation, or denial of the offender's license, permit, or privilege  
25 to drive required by this section, the department shall place the  
26 offender's driving privilege in probationary status pursuant to RCW  
27 46.20.355.

28 (~~((9))~~) (10)(a) In addition to any nonsuspendable and nondeferrable  
29 jail sentence required by this section, whenever the court imposes less  
30 than one year in jail, the court shall also suspend but shall not defer  
31 a period of confinement for a period not exceeding five years. The  
32 court shall impose conditions of probation that include: (i) Not  
33 driving a motor vehicle within this state without a valid license to  
34 drive and proof of financial responsibility for the future; (ii) not  
35 driving a motor vehicle within this state while having an alcohol  
36 concentration of 0.08 or more within two hours after driving; and (iii)  
37 not refusing to submit to a test of his or her breath or blood to  
38 determine alcohol concentration upon request of a law enforcement

1 officer who has reasonable grounds to believe the person was driving or  
2 was in actual physical control of a motor vehicle within this state  
3 while under the influence of intoxicating liquor. The court may impose  
4 conditions of probation that include nonrepetition, installation of an  
5 ignition interlock device on the probationer's motor vehicle, alcohol  
6 or drug treatment, supervised probation, or other conditions that may  
7 be appropriate. The sentence may be imposed in whole or in part upon  
8 violation of a condition of probation during the suspension period.

9 (b) For each violation of mandatory conditions of probation under  
10 (a)(i), (ii), or (iii) of this subsection, the court shall order the  
11 convicted person to be confined for thirty days, which shall not be  
12 suspended or deferred.

13 (c) For each incident involving a violation of a mandatory  
14 condition of probation imposed under this subsection, the license,  
15 permit, or privilege to drive of the person shall be suspended by the  
16 court for thirty days or, if such license, permit, or privilege to  
17 drive already is suspended, revoked, or denied at the time the finding  
18 of probation violation is made, the suspension, revocation, or denial  
19 then in effect shall be extended by thirty days. The court shall  
20 notify the department of any suspension, revocation, or denial or any  
21 extension of a suspension, revocation, or denial imposed under this  
22 subsection.

23 ~~((+10))~~ (11) A court may waive the electronic home monitoring  
24 requirements of this chapter when:

25 (a) The offender does not have a dwelling, telephone service, or  
26 any other necessity to operate an electronic home monitoring system;

27 (b) The offender does not reside in the state of Washington; or

28 (c) The court determines that there is reason to believe that the  
29 offender would violate the conditions of the electronic home monitoring  
30 penalty.

31 Whenever the mandatory minimum term of electronic home monitoring  
32 is waived, the court shall state in writing the reason for granting the  
33 waiver and the facts upon which the waiver is based, and shall impose  
34 an alternative sentence with similar punitive consequences. The  
35 alternative sentence may include, but is not limited to, additional  
36 jail time, work crew, or work camp.

37 Whenever the combination of jail time and electronic home  
38 monitoring or alternative sentence would exceed three hundred sixty-

1 five days, the offender shall serve the jail portion of the sentence  
2 first, and the electronic home monitoring or alternative portion of the  
3 sentence shall be reduced so that the combination does not exceed three  
4 hundred sixty-five days.

5 ~~((11))~~ (12) An offender serving a sentence under this section,  
6 whether or not a mandatory minimum term has expired, may be granted an  
7 extraordinary medical placement by the jail administrator subject to  
8 the standards and limitations set forth in RCW 9.94A.728(4).

9 ~~((12))~~ (13) For purposes of this section and RCW 46.61.502 and  
10 46.61.504:

11 (a) A "prior offense" means any of the following:

12 (i) A conviction for a violation of RCW 46.61.502 or an equivalent  
13 local ordinance;

14 (ii) A conviction for a violation of RCW 46.61.504 or an equivalent  
15 local ordinance;

16 (iii) A conviction for a violation of RCW 46.61.520 committed while  
17 under the influence of intoxicating liquor or any drug;

18 (iv) A conviction for a violation of RCW 46.61.522 committed while  
19 under the influence of intoxicating liquor or any drug;

20 (v) A conviction for a violation of RCW 46.61.5249, 46.61.500, or  
21 9A.36.050 or an equivalent local ordinance, if the conviction is the  
22 result of a charge that was originally filed as a violation of RCW  
23 46.61.502 or 46.61.504, or an equivalent local ordinance, or of RCW  
24 46.61.520 or 46.61.522;

25 (vi) An out-of-state conviction for a violation that would have  
26 been a violation of (a)(i), (ii), (iii), (iv), or (v) of this  
27 subsection if committed in this state;

28 (vii) A deferred prosecution under chapter 10.05 RCW granted in a  
29 prosecution for a violation of RCW 46.61.502, 46.61.504, or an  
30 equivalent local ordinance; or

31 (viii) A deferred prosecution under chapter 10.05 RCW granted in a  
32 prosecution for a violation of RCW 46.61.5249, or an equivalent local  
33 ordinance, if the charge under which the deferred prosecution was  
34 granted was originally filed as a violation of RCW 46.61.502 or  
35 46.61.504, or an equivalent local ordinance, or of RCW 46.61.520 or  
36 46.61.522; and

37 (b) "Within seven years" means that the arrest for a prior offense  
38 occurred within seven years of the arrest for the current offense.

1        NEW SECTION.    **Sec. 4.**    A new section is added to chapter 9.94A RCW  
2 to read as follows:

3        (1) When sentencing an offender convicted of a violation of RCW  
4 46.61.502(6) or 46.61.504(6), the court, in addition to imposing the  
5 provisions of this chapter, shall order the offender to undergo alcohol  
6 or chemical dependency treatment services during incarceration. The  
7 offender shall be liable for the cost of treatment unless the court  
8 finds the offender indigent and no third-party insurance coverage is  
9 available.

10        (2) The provisions under RCW 46.61.5055 (8) and (9) regarding the  
11 suspension, revocation, or denial of the offender's license, permit, or  
12 nonresident privilege to drive shall apply to an offender convicted of  
13 a violation of RCW 46.61.502(6) or 46.61.504(6).

14        (3) The provisions under RCW 46.20.720 and 46.61.5055(5) regarding  
15 ignition interlock devices shall apply to an offender convicted of a  
16 violation of RCW 46.61.502(6) or 46.61.504(6).

17        **Sec. 5.**    RCW 9.94A.030 and 2003 c 53 s 55 are each amended to read  
18 as follows:

19        Unless the context clearly requires otherwise, the definitions in  
20 this section apply throughout this chapter.

21        (1) "Board" means the indeterminate sentence review board created  
22 under chapter 9.95 RCW.

23        (2) "Collect," or any derivative thereof, "collect and remit," or  
24 "collect and deliver," when used with reference to the department,  
25 means that the department, either directly or through a collection  
26 agreement authorized by RCW 9.94A.760, is responsible for monitoring  
27 and enforcing the offender's sentence with regard to the legal  
28 financial obligation, receiving payment thereof from the offender, and,  
29 consistent with current law, delivering daily the entire payment to the  
30 superior court clerk without depositing it in a departmental account.

31        (3) "Commission" means the sentencing guidelines commission.

32        (4) "Community corrections officer" means an employee of the  
33 department who is responsible for carrying out specific duties in  
34 supervision of sentenced offenders and monitoring of sentence  
35 conditions.

36        (5) "Community custody" means that portion of an offender's  
37 sentence of confinement in lieu of earned release time or imposed

1 pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670,  
2 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545, served in the  
3 community subject to controls placed on the offender's movement and  
4 activities by the department. For offenders placed on community  
5 custody for crimes committed on or after July 1, 2000, the department  
6 shall assess the offender's risk of reoffense and may establish and  
7 modify conditions of community custody, in addition to those imposed by  
8 the court, based upon the risk to community safety.

9 (6) "Community custody range" means the minimum and maximum period  
10 of community custody included as part of a sentence under RCW  
11 9.94A.715, as established by the commission or the legislature under  
12 RCW 9.94A.850, for crimes committed on or after July 1, 2000.

13 (7) "Community placement" means that period during which the  
14 offender is subject to the conditions of community custody and/or  
15 postrelease supervision, which begins either upon completion of the  
16 term of confinement (postrelease supervision) or at such time as the  
17 offender is transferred to community custody in lieu of earned release.  
18 Community placement may consist of entirely community custody, entirely  
19 postrelease supervision, or a combination of the two.

20 (8) "Community restitution" means compulsory service, without  
21 compensation, performed for the benefit of the community by the  
22 offender.

23 (9) "Community supervision" means a period of time during which a  
24 convicted offender is subject to crime-related prohibitions and other  
25 sentence conditions imposed by a court pursuant to this chapter or RCW  
26 16.52.200(6) or 46.61.524. Where the court finds that any offender has  
27 a chemical dependency that has contributed to his or her offense, the  
28 conditions of supervision may, subject to available resources, include  
29 treatment. For purposes of the interstate compact for out-of-state  
30 supervision of parolees and probationers, RCW 9.95.270, community  
31 supervision is the functional equivalent of probation and should be  
32 considered the same as probation by other states.

33 (10) "Confinement" means total or partial confinement.

34 (11) "Conviction" means an adjudication of guilt pursuant to Titles  
35 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and  
36 acceptance of a plea of guilty.

37 (12) "Crime-related prohibition" means an order of a court  
38 prohibiting conduct that directly relates to the circumstances of the

1 crime for which the offender has been convicted, and shall not be  
2 construed to mean orders directing an offender affirmatively to  
3 participate in rehabilitative programs or to otherwise perform  
4 affirmative conduct. However, affirmative acts necessary to monitor  
5 compliance with the order of a court may be required by the department.

6 (13) "Criminal history" means the list of a defendant's prior  
7 convictions and juvenile adjudications, whether in this state, in  
8 federal court, or elsewhere.

9 (a) The history shall include, where known, for each conviction (i)  
10 whether the defendant has been placed on probation and the length and  
11 terms thereof; and (ii) whether the defendant has been incarcerated and  
12 the length of incarceration.

13 (b) A conviction may be removed from a defendant's criminal history  
14 only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or  
15 a similar out-of-state statute, or if the conviction has been vacated  
16 pursuant to a governor's pardon.

17 (c) The determination of a defendant's criminal history is distinct  
18 from the determination of an offender score. A prior conviction that  
19 was not included in an offender score calculated pursuant to a former  
20 version of the sentencing reform act remains part of the defendant's  
21 criminal history.

22 (14) "Day fine" means a fine imposed by the sentencing court that  
23 equals the difference between the offender's net daily income and the  
24 reasonable obligations that the offender has for the support of the  
25 offender and any dependents.

26 (15) "Day reporting" means a program of enhanced supervision  
27 designed to monitor the offender's daily activities and compliance with  
28 sentence conditions, and in which the offender is required to report  
29 daily to a specific location designated by the department or the  
30 sentencing court.

31 (16) "Department" means the department of corrections.

32 (17) "Determinate sentence" means a sentence that states with  
33 exactitude the number of actual years, months, or days of total  
34 confinement, of partial confinement, of community supervision, the  
35 number of actual hours or days of community restitution work, or  
36 dollars or terms of a legal financial obligation. The fact that an  
37 offender through earned release can reduce the actual period of

1 confinement shall not affect the classification of the sentence as a  
2 determinate sentence.

3 (18) "Disposable earnings" means that part of the earnings of an  
4 offender remaining after the deduction from those earnings of any  
5 amount required by law to be withheld. For the purposes of this  
6 definition, "earnings" means compensation paid or payable for personal  
7 services, whether denominated as wages, salary, commission, bonuses, or  
8 otherwise, and, notwithstanding any other provision of law making the  
9 payments exempt from garnishment, attachment, or other process to  
10 satisfy a court-ordered legal financial obligation, specifically  
11 includes periodic payments pursuant to pension or retirement programs,  
12 or insurance policies of any type, but does not include payments made  
13 under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050,  
14 or Title 74 RCW.

15 (19) "Drug offender sentencing alternative" is a sentencing option  
16 available to persons convicted of a felony offense other than a violent  
17 offense or a sex offense and who are eligible for the option under RCW  
18 9.94A.660.

19 (20) "Drug offense" means:

20 (a) Any felony violation of chapter 69.50 RCW except possession of  
21 a controlled substance (RCW 69.50.4013) or forged prescription for a  
22 controlled substance (RCW 69.50.403);

23 (b) Any offense defined as a felony under federal law that relates  
24 to the possession, manufacture, distribution, or transportation of a  
25 controlled substance; or

26 (c) Any out-of-state conviction for an offense that under the laws  
27 of this state would be a felony classified as a drug offense under (a)  
28 of this subsection.

29 (21) "Earned release" means earned release from confinement as  
30 provided in RCW 9.94A.728.

31 (22) "Escape" means:

32 (a) Sexually violent predator escape (RCW 9A.76.115), escape in the  
33 first degree (RCW 9A.76.110), escape in the second degree (RCW  
34 9A.76.120), willful failure to return from furlough (RCW 72.66.060),  
35 willful failure to return from work release (RCW 72.65.070), or willful  
36 failure to be available for supervision by the department while in  
37 community custody (RCW 72.09.310); or

1 (b) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as an escape  
3 under (a) of this subsection.

4 (23) "Felony traffic offense" means:

5 (a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW  
6 46.61.522), eluding a police officer (RCW 46.61.024), (~~(e)~~) felony  
7 hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while  
8 under the influence of intoxicating liquor or any drug (RCW  
9 46.61.502(6)), or felony physical control of a vehicle while under the  
10 influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

11 (b) Any federal or out-of-state conviction for an offense that  
12 under the laws of this state would be a felony classified as a felony  
13 traffic offense under (a) of this subsection.

14 (24) "Fine" means a specific sum of money ordered by the sentencing  
15 court to be paid by the offender to the court over a specific period of  
16 time.

17 (25) "First-time offender" means any person who has no prior  
18 convictions for a felony and is eligible for the first-time offender  
19 waiver under RCW 9.94A.650.

20 (26) "Home detention" means a program of partial confinement  
21 available to offenders wherein the offender is confined in a private  
22 residence subject to electronic surveillance.

23 (27) "Legal financial obligation" means a sum of money that is  
24 ordered by a superior court of the state of Washington for legal  
25 financial obligations which may include restitution to the victim,  
26 statutorily imposed crime victims' compensation fees as assessed  
27 pursuant to RCW 7.68.035, court costs, county or interlocal drug funds,  
28 court-appointed attorneys' fees, and costs of defense, fines, and any  
29 other financial obligation that is assessed to the offender as a result  
30 of a felony conviction. Upon conviction for vehicular assault while  
31 under the influence of intoxicating liquor or any drug, RCW  
32 46.61.522(1)(b), or vehicular homicide while under the influence of  
33 intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial  
34 obligations may also include payment to a public agency of the expense  
35 of an emergency response to the incident resulting in the conviction,  
36 subject to RCW 38.52.430.

37 (28) "Most serious offense" means any of the following felonies or  
38 a felony attempt to commit any of the following felonies:

1 (a) Any felony defined under any law as a class A felony or  
2 criminal solicitation of or criminal conspiracy to commit a class A  
3 felony;

4 (b) Assault in the second degree;

5 (c) Assault of a child in the second degree;

6 (d) Child molestation in the second degree;

7 (e) Controlled substance homicide;

8 (f) Extortion in the first degree;

9 (g) Incest when committed against a child under age fourteen;

10 (h) Indecent liberties;

11 (i) Kidnapping in the second degree;

12 (j) Leading organized crime;

13 (k) Manslaughter in the first degree;

14 (l) Manslaughter in the second degree;

15 (m) Promoting prostitution in the first degree;

16 (n) Rape in the third degree;

17 (o) Robbery in the second degree;

18 (p) Sexual exploitation;

19 (q) Vehicular assault, when caused by the operation or driving of  
20 a vehicle by a person while under the influence of intoxicating liquor  
21 or any drug or by the operation or driving of a vehicle in a reckless  
22 manner;

23 (r) Vehicular homicide, when proximately caused by the driving of  
24 any vehicle by any person while under the influence of intoxicating  
25 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
26 any vehicle in a reckless manner;

27 (s) Any other class B felony offense with a finding of sexual  
28 motivation;

29 (t) Any other felony with a deadly weapon verdict under RCW  
30 9.94A.602;

31 (u) Any felony offense in effect at any time prior to December 2,  
32 1993, that is comparable to a most serious offense under this  
33 subsection, or any federal or out-of-state conviction for an offense  
34 that under the laws of this state would be a felony classified as a  
35 most serious offense under this subsection;

36 (v)(i) A prior conviction for indecent liberties under RCW  
37 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess.

1 as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as  
2 it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1)  
3 (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

4 (ii) A prior conviction for indecent liberties under RCW  
5 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988,  
6 if: (A) The crime was committed against a child under the age of  
7 fourteen; or (B) the relationship between the victim and perpetrator is  
8 included in the definition of indecent liberties under RCW  
9 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997,  
10 or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993,  
11 through July 27, 1997.

12 (29) "Nonviolent offense" means an offense which is not a violent  
13 offense.

14 (30) "Offender" means a person who has committed a felony  
15 established by state law and is eighteen years of age or older or is  
16 less than eighteen years of age but whose case is under superior court  
17 jurisdiction under RCW 13.04.030 or has been transferred by the  
18 appropriate juvenile court to a criminal court pursuant to RCW  
19 13.40.110. Throughout this chapter, the terms "offender" and  
20 "defendant" are used interchangeably.

21 (31) "Partial confinement" means confinement for no more than one  
22 year in a facility or institution operated or utilized under contract  
23 by the state or any other unit of government, or, if home detention or  
24 work crew has been ordered by the court, in an approved residence, for  
25 a substantial portion of each day with the balance of the day spent in  
26 the community. Partial confinement includes work release, home  
27 detention, work crew, and a combination of work crew and home  
28 detention.

29 (32) "Persistent offender" is an offender who:

30 (a)(i) Has been convicted in this state of any felony considered a  
31 most serious offense; and

32 (ii) Has, before the commission of the offense under (a) of this  
33 subsection, been convicted as an offender on at least two separate  
34 occasions, whether in this state or elsewhere, of felonies that under  
35 the laws of this state would be considered most serious offenses and  
36 would be included in the offender score under RCW 9.94A.525; provided  
37 that of the two or more previous convictions, at least one conviction

1 must have occurred before the commission of any of the other most  
2 serious offenses for which the offender was previously convicted; or

3 (b)(i) Has been convicted of: (A) Rape in the first degree, rape  
4 of a child in the first degree, child molestation in the first degree,  
5 rape in the second degree, rape of a child in the second degree, or  
6 indecent liberties by forcible compulsion; (B) any of the following  
7 offenses with a finding of sexual motivation: Murder in the first  
8 degree, murder in the second degree, homicide by abuse, kidnapping in  
9 the first degree, kidnapping in the second degree, assault in the first  
10 degree, assault in the second degree, assault of a child in the first  
11 degree, or burglary in the first degree; or (C) an attempt to commit  
12 any crime listed in this subsection (32)(b)(i); and

13 (ii) Has, before the commission of the offense under (b)(i) of this  
14 subsection, been convicted as an offender on at least one occasion,  
15 whether in this state or elsewhere, of an offense listed in (b)(i) of  
16 this subsection or any federal or out-of-state offense or offense under  
17 prior Washington law that is comparable to the offenses listed in  
18 (b)(i) of this subsection. A conviction for rape of a child in the  
19 first degree constitutes a conviction under (b)(i) of this subsection  
20 only when the offender was sixteen years of age or older when the  
21 offender committed the offense. A conviction for rape of a child in  
22 the second degree constitutes a conviction under (b)(i) of this  
23 subsection only when the offender was eighteen years of age or older  
24 when the offender committed the offense.

25 (33) "Postrelease supervision" is that portion of an offender's  
26 community placement that is not community custody.

27 (34) "Restitution" means a specific sum of money ordered by the  
28 sentencing court to be paid by the offender to the court over a  
29 specified period of time as payment of damages. The sum may include  
30 both public and private costs.

31 (35) "Risk assessment" means the application of an objective  
32 instrument supported by research and adopted by the department for the  
33 purpose of assessing an offender's risk of reoffense, taking into  
34 consideration the nature of the harm done by the offender, place and  
35 circumstances of the offender related to risk, the offender's  
36 relationship to any victim, and any information provided to the  
37 department by victims. The results of a risk assessment shall not be  
38 based on unconfirmed or unconfirmable allegations.

1 (36) "Serious traffic offense" means:  
2 (a) Nonfelony driving while under the influence of intoxicating  
3 liquor or any drug (RCW 46.61.502), nonfelony actual physical control  
4 while under the influence of intoxicating liquor or any drug (RCW  
5 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an  
6 attended vehicle (RCW 46.52.020(5)); or  
7 (b) Any federal, out-of-state, county, or municipal conviction for  
8 an offense that under the laws of this state would be classified as a  
9 serious traffic offense under (a) of this subsection.

10 (37) "Serious violent offense" is a subcategory of violent offense  
11 and means:  
12 (a)(i) Murder in the first degree;  
13 (ii) Homicide by abuse;  
14 (iii) Murder in the second degree;  
15 (iv) Manslaughter in the first degree;  
16 (v) Assault in the first degree;  
17 (vi) Kidnapping in the first degree;  
18 (vii) Rape in the first degree;  
19 (viii) Assault of a child in the first degree; or  
20 (ix) An attempt, criminal solicitation, or criminal conspiracy to  
21 commit one of these felonies; or  
22 (b) Any federal or out-of-state conviction for an offense that  
23 under the laws of this state would be a felony classified as a serious  
24 violent offense under (a) of this subsection.

25 (38) "Sex offense" means:  
26 (a)(i) A felony that is a violation of chapter 9A.44 RCW other than  
27 RCW 9A.44.130(11);  
28 (ii) A violation of RCW 9A.64.020;  
29 (iii) A felony that is a violation of chapter 9.68A RCW other than  
30 RCW 9.68A.070 or 9.68A.080; or  
31 (iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt,  
32 criminal solicitation, or criminal conspiracy to commit such crimes;  
33 (b) Any conviction for a felony offense in effect at any time prior  
34 to July 1, 1976, that is comparable to a felony classified as a sex  
35 offense in (a) of this subsection;  
36 (c) A felony with a finding of sexual motivation under RCW  
37 9.94A.835 or 13.40.135; or

1 (d) Any federal or out-of-state conviction for an offense that  
2 under the laws of this state would be a felony classified as a sex  
3 offense under (a) of this subsection.

4 (39) "Sexual motivation" means that one of the purposes for which  
5 the defendant committed the crime was for the purpose of his or her  
6 sexual gratification.

7 (40) "Standard sentence range" means the sentencing court's  
8 discretionary range in imposing a nonappealable sentence.

9 (41) "Statutory maximum sentence" means the maximum length of time  
10 for which an offender may be confined as punishment for a crime as  
11 prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the  
12 crime, or other statute defining the maximum penalty for a crime.

13 (42) "Total confinement" means confinement inside the physical  
14 boundaries of a facility or institution operated or utilized under  
15 contract by the state or any other unit of government for twenty-four  
16 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

17 (43) "Transition training" means written and verbal instructions  
18 and assistance provided by the department to the offender during the  
19 two weeks prior to the offender's successful completion of the work  
20 ethic camp program. The transition training shall include instructions  
21 in the offender's requirements and obligations during the offender's  
22 period of community custody.

23 (44) "Victim" means any person who has sustained emotional,  
24 psychological, physical, or financial injury to person or property as  
25 a direct result of the crime charged.

26 (45) "Violent offense" means:

27 (a) Any of the following felonies:

28 (i) Any felony defined under any law as a class A felony or an  
29 attempt to commit a class A felony;

30 (ii) Criminal solicitation of or criminal conspiracy to commit a  
31 class A felony;

32 (iii) Manslaughter in the first degree;

33 (iv) Manslaughter in the second degree;

34 (v) Indecent liberties if committed by forcible compulsion;

35 (vi) Kidnapping in the second degree;

36 (vii) Arson in the second degree;

37 (viii) Assault in the second degree;

38 (ix) Assault of a child in the second degree;

1 (x) Extortion in the first degree;

2 (xi) Robbery in the second degree;

3 (xii) Drive-by shooting;

4 (xiii) Vehicular assault, when caused by the operation or driving  
5 of a vehicle by a person while under the influence of intoxicating  
6 liquor or any drug or by the operation or driving of a vehicle in a  
7 reckless manner; and

8 (xiv) Vehicular homicide, when proximately caused by the driving of  
9 any vehicle by any person while under the influence of intoxicating  
10 liquor or any drug as defined by RCW 46.61.502, or by the operation of  
11 any vehicle in a reckless manner;

12 (b) Any conviction for a felony offense in effect at any time prior  
13 to July 1, 1976, that is comparable to a felony classified as a violent  
14 offense in (a) of this subsection; and

15 (c) Any federal or out-of-state conviction for an offense that  
16 under the laws of this state would be a felony classified as a violent  
17 offense under (a) or (b) of this subsection.

18 (46) "Work crew" means a program of partial confinement consisting  
19 of civic improvement tasks for the benefit of the community that  
20 complies with RCW 9.94A.725.

21 (47) "Work ethic camp" means an alternative incarceration program  
22 as provided in RCW 9.94A.690 designed to reduce recidivism and lower  
23 the cost of corrections by requiring offenders to complete a  
24 comprehensive array of real-world job and vocational experiences,  
25 character-building work ethics training, life management skills  
26 development, substance abuse rehabilitation, counseling, literacy  
27 training, and basic adult education.

28 (48) "Work release" means a program of partial confinement  
29 available to offenders who are employed or engaged as a student in a  
30 regular course of study at school.

31 **Sec. 6.** RCW 9.94A.505 and 2002 c 290 s 17, 2002 c 289 s 6, and  
32 2002 c 175 s 6 are each reenacted and amended to read as follows:

33 (1) When a person is convicted of a felony, the court shall impose  
34 punishment as provided in this chapter.

35 (2)(a) The court shall impose a sentence as provided in the  
36 following sections and as applicable in the case:

1 (i) Unless another term of confinement applies, the court shall  
2 impose a sentence within the standard sentence range established in RCW  
3 9.94A.510 or 9.94A.517;

4 (ii) RCW 9.94A.700 and 9.94A.705, relating to community placement;

5 (iii) RCW 9.94A.710 and 9.94A.715, relating to community custody;

6 (iv) RCW 9.94A.545, relating to community custody for offenders  
7 whose term of confinement is one year or less;

8 (v) RCW 9.94A.570, relating to persistent offenders;

9 (vi) RCW 9.94A.540, relating to mandatory minimum terms;

10 (vii) RCW 9.94A.650, relating to the first-time offender waiver;

11 (viii) RCW 9.94A.660, relating to the drug offender sentencing  
12 alternative;

13 (ix) RCW 9.94A.670, relating to the special sex offender sentencing  
14 alternative;

15 (x) RCW 9.94A.712, relating to certain sex offenses;

16 (xi) RCW 9.94A.535, relating to exceptional sentences;

17 (xii) RCW 9.94A.589, relating to consecutive and concurrent  
18 sentences;

19 (xiii) Section 4 of this act, relating to felony driving while  
20 under the influence of intoxicating liquor or any drug and felony  
21 physical control of a vehicle while under the influence of intoxicating  
22 liquor or any drug.

23 (b) If a standard sentence range has not been established for the  
24 offender's crime, the court shall impose a determinate sentence which  
25 may include not more than one year of confinement; community  
26 restitution work; until July 1, 2000, a term of community supervision  
27 not to exceed one year and on and after July 1, 2000, a term of  
28 community custody not to exceed one year, subject to conditions and  
29 sanctions as authorized in RCW 9.94A.710 (2) and (3); and/or other  
30 legal financial obligations. The court may impose a sentence which  
31 provides more than one year of confinement if the court finds reasons  
32 justifying an exceptional sentence as provided in RCW 9.94A.535.

33 (3) If the court imposes a sentence requiring confinement of thirty  
34 days or less, the court may, in its discretion, specify that the  
35 sentence be served on consecutive or intermittent days. A sentence  
36 requiring more than thirty days of confinement shall be served on  
37 consecutive days. Local jail administrators may schedule court-ordered  
38 intermittent sentences as space permits.

1 (4) If a sentence imposed includes payment of a legal financial  
2 obligation, it shall be imposed as provided in RCW 9.94A.750,  
3 9.94A.753, 9.94A.760, and 43.43.7541.

4 (5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a  
5 court may not impose a sentence providing for a term of confinement or  
6 community supervision, community placement, or community custody which  
7 exceeds the statutory maximum for the crime as provided in chapter  
8 9A.20 RCW.

9 (6) The sentencing court shall give the offender credit for all  
10 confinement time served before the sentencing if that confinement was  
11 solely in regard to the offense for which the offender is being  
12 sentenced.

13 (7) The court shall order restitution as provided in RCW 9.94A.750  
14 and 9.94A.753.

15 (8) As a part of any sentence, the court may impose and enforce  
16 crime-related prohibitions and affirmative conditions as provided in  
17 this chapter.

18 (9) The court may order an offender whose sentence includes  
19 community placement or community supervision to undergo a mental status  
20 evaluation and to participate in available outpatient mental health  
21 treatment, if the court finds that reasonable grounds exist to believe  
22 that the offender is a mentally ill person as defined in RCW 71.24.025,  
23 and that this condition is likely to have influenced the offense. An  
24 order requiring mental status evaluation or treatment must be based on  
25 a presentence report and, if applicable, mental status evaluations that  
26 have been filed with the court to determine the offender's competency  
27 or eligibility for a defense of insanity. The court may order  
28 additional evaluations at a later date if deemed appropriate.

29 (10) In any sentence of partial confinement, the court may require  
30 the offender to serve the partial confinement in work release, in a  
31 program of home detention, on work crew, or in a combined program of  
32 work crew and home detention.

33 (11) In sentencing an offender convicted of a crime of domestic  
34 violence, as defined in RCW 10.99.020, if the offender has a minor  
35 child, or if the victim of the offense for which the offender was  
36 convicted has a minor child, the court may, as part of any term of  
37 community supervision, community placement, or community custody, order

1 the offender to participate in a domestic violence perpetrator program  
2 approved under RCW 26.50.150.

3 **Sec. 7.** RCW 9.94A.525 and 2002 c 290 s 3 and 2002 c 107 s 3 are  
4 each reenacted and amended to read as follows:

5 The offender score is measured on the horizontal axis of the  
6 sentencing grid. The offender score rules are as follows:

7 The offender score is the sum of points accrued under this section  
8 rounded down to the nearest whole number.

9 (1) A prior conviction is a conviction which exists before the date  
10 of sentencing for the offense for which the offender score is being  
11 computed. Convictions entered or sentenced on the same date as the  
12 conviction for which the offender score is being computed shall be  
13 deemed "other current offenses" within the meaning of RCW 9.94A.589.

14 (2)(a) Class A and sex prior felony convictions shall always be  
15 included in the offender score.

16 (b) Class B prior felony convictions other than sex offenses shall  
17 not be included in the offender score, if since the last date of  
18 release from confinement (including full-time residential treatment)  
19 pursuant to a felony conviction, if any, or entry of judgment and  
20 sentence, the offender had spent ten consecutive years in the community  
21 without committing any crime that subsequently results in a conviction.

22 (c) Except as provided in (e) of this subsection, class C prior  
23 felony convictions other than sex offenses shall not be included in the  
24 offender score if, since the last date of release from confinement  
25 (including full-time residential treatment) pursuant to a felony  
26 conviction, if any, or entry of judgment and sentence, the offender had  
27 spent five consecutive years in the community without committing any  
28 crime that subsequently results in a conviction.

29 (d) Except as provided in (e) of this subsection, serious traffic  
30 convictions shall not be included in the offender score if, since the  
31 last date of release from confinement (including full-time residential  
32 treatment) pursuant to a felony conviction, if any, or entry of  
33 judgment and sentence, the offender spent five years in the community  
34 without committing any crime that subsequently results in a conviction.

35 (e) If the present conviction is felony driving while under the  
36 influence of intoxicating liquor or any drug (RCW 46.61.502(6)) or  
37 felony physical control of a vehicle while under the influence of

1 intoxicating liquor or any drug (RCW 46.61.504(6)), prior convictions  
2 of felony driving while under the influence of intoxicating liquor or  
3 any drug, felony physical control of a vehicle while under the  
4 influence of intoxicating liquor or any drug, and serious traffic  
5 offenses shall be included in the offender score if: (i) The prior  
6 convictions were committed within five years since the last date of  
7 release from confinement (including full-time residential treatment) or  
8 entry of judgment and sentence; or (ii) the prior convictions would be  
9 considered "prior offenses within ten years" as defined in RCW  
10 46.61.5055.

11 (f) This subsection applies to both adult and juvenile prior  
12 convictions.

13 (3) Out-of-state convictions for offenses shall be classified  
14 according to the comparable offense definitions and sentences provided  
15 by Washington law. Federal convictions for offenses shall be  
16 classified according to the comparable offense definitions and  
17 sentences provided by Washington law. If there is no clearly  
18 comparable offense under Washington law or the offense is one that is  
19 usually considered subject to exclusive federal jurisdiction, the  
20 offense shall be scored as a class C felony equivalent if it was a  
21 felony under the relevant federal statute.

22 (4) Score prior convictions for felony anticipatory offenses  
23 (attempts, criminal solicitations, and criminal conspiracies) the same  
24 as if they were convictions for completed offenses.

25 (5)(a) In the case of multiple prior convictions, for the purpose  
26 of computing the offender score, count all convictions separately,  
27 except:

28 (i) Prior offenses which were found, under RCW 9.94A.589(1)(a), to  
29 encompass the same criminal conduct, shall be counted as one offense,  
30 the offense that yields the highest offender score. The current  
31 sentencing court shall determine with respect to other prior adult  
32 offenses for which sentences were served concurrently or prior juvenile  
33 offenses for which sentences were served consecutively, whether those  
34 offenses shall be counted as one offense or as separate offenses using  
35 the "same criminal conduct" analysis found in RCW 9.94A.589(1)(a), and  
36 if the court finds that they shall be counted as one offense, then the  
37 offense that yields the highest offender score shall be used. The  
38 current sentencing court may presume that such other prior offenses

1 were not the same criminal conduct from sentences imposed on separate  
2 dates, or in separate counties or jurisdictions, or in separate  
3 complaints, indictments, or informations;

4 (ii) In the case of multiple prior convictions for offenses  
5 committed before July 1, 1986, for the purpose of computing the  
6 offender score, count all adult convictions served concurrently as one  
7 offense, and count all juvenile convictions entered on the same date as  
8 one offense. Use the conviction for the offense that yields the  
9 highest offender score.

10 (b) As used in this subsection (5), "served concurrently" means  
11 that: (i) The latter sentence was imposed with specific reference to  
12 the former; (ii) the concurrent relationship of the sentences was  
13 judicially imposed; and (iii) the concurrent timing of the sentences  
14 was not the result of a probation or parole revocation on the former  
15 offense.

16 (6) If the present conviction is one of the anticipatory offenses  
17 of criminal attempt, solicitation, or conspiracy, count each prior  
18 conviction as if the present conviction were for a completed offense.  
19 When these convictions are used as criminal history, score them the  
20 same as a completed crime.

21 (7) If the present conviction is for a nonviolent offense and not  
22 covered by subsection (11) or (12) of this section, count one point for  
23 each adult prior felony conviction and one point for each juvenile  
24 prior violent felony conviction and 1/2 point for each juvenile prior  
25 nonviolent felony conviction.

26 (8) If the present conviction is for a violent offense and not  
27 covered in subsection (9), (10), (11), or (12) of this section, count  
28 two points for each prior adult and juvenile violent felony conviction,  
29 one point for each prior adult nonviolent felony conviction, and 1/2  
30 point for each prior juvenile nonviolent felony conviction.

31 (9) If the present conviction is for a serious violent offense,  
32 count three points for prior adult and juvenile convictions for crimes  
33 in this category, two points for each prior adult and juvenile violent  
34 conviction (not already counted), one point for each prior adult  
35 nonviolent felony conviction, and 1/2 point for each prior juvenile  
36 nonviolent felony conviction.

37 (10) If the present conviction is for Burglary 1, count prior  
38 convictions as in subsection (8) of this section; however count two

1 points for each prior adult Burglary 2 or residential burglary  
2 conviction, and one point for each prior juvenile Burglary 2 or  
3 residential burglary conviction.

4 (11) If the present conviction is for a felony traffic offense  
5 count two points for each adult or juvenile prior conviction for  
6 Vehicular Homicide or Vehicular Assault; for each felony offense count  
7 one point for each adult and 1/2 point for each juvenile prior  
8 conviction; for each serious traffic offense, other than those used for  
9 an enhancement pursuant to RCW 46.61.520(2), count one point for each  
10 adult and 1/2 point for each juvenile prior conviction.

11 (12) If the present conviction is for manufacture of  
12 methamphetamine count three points for each adult prior manufacture of  
13 methamphetamine conviction and two points for each juvenile manufacture  
14 of methamphetamine offense. If the present conviction is for a drug  
15 offense and the offender has a criminal history that includes a sex  
16 offense or serious violent offense, count three points for each adult  
17 prior felony drug offense conviction and two points for each juvenile  
18 drug offense. All other adult and juvenile felonies are scored as in  
19 subsection (8) of this section if the current drug offense is violent,  
20 or as in subsection (7) of this section if the current drug offense is  
21 nonviolent.

22 (13) If the present conviction is for Escape from Community  
23 Custody, RCW 72.09.310, count only prior escape convictions in the  
24 offender score. Count adult prior escape convictions as one point and  
25 juvenile prior escape convictions as 1/2 point.

26 (14) If the present conviction is for Escape 1, RCW 9A.76.110, or  
27 Escape 2, RCW 9A.76.120, count adult prior convictions as one point and  
28 juvenile prior convictions as 1/2 point.

29 (15) If the present conviction is for Burglary 2 or residential  
30 burglary, count priors as in subsection (7) of this section; however,  
31 count two points for each adult and juvenile prior Burglary 1  
32 conviction, two points for each adult prior Burglary 2 or residential  
33 burglary conviction, and one point for each juvenile prior Burglary 2  
34 or residential burglary conviction.

35 (16) If the present conviction is for a sex offense, count priors  
36 as in subsections (7) through (15) of this section; however count three  
37 points for each adult and juvenile prior sex offense conviction.

1 (17) If the present conviction is for an offense committed while  
2 the offender was under community placement, add one point.

3 (18) The fact that a prior conviction was not included in an  
4 offender's offender score or criminal history at a previous sentencing  
5 shall have no bearing on whether it is included in the criminal history  
6 or offender score for the current offense. Accordingly, prior  
7 convictions that were not counted in the offender score or included in  
8 criminal history under repealed or previous versions of the sentencing  
9 reform act shall be included in criminal history and shall count in the  
10 offender score if the current version of the sentencing reform act  
11 requires including or counting those convictions.

12 **Sec. 8.** RCW 9.94A.640 and 1987 c 486 s 7 are each amended to read  
13 as follows:

14 (1) Every offender who has been discharged under RCW 9.94A.637 may  
15 apply to the sentencing court for a vacation of the offender's record  
16 of conviction. If the court finds the offender meets the tests  
17 prescribed in subsection (2) of this section, the court may clear the  
18 record of conviction by: (a) Permitting the offender to withdraw the  
19 offender's plea of guilty and to enter a plea of not guilty; or (b) if  
20 the offender has been convicted after a plea of not guilty, by the  
21 court setting aside the verdict of guilty; and (c) by the court  
22 dismissing the information or indictment against the offender.

23 (2) An offender may not have the record of conviction cleared if:  
24 (a) There are any criminal charges against the offender pending in any  
25 court of this state or another state, or in any federal court; (b) the  
26 offense was a violent offense as defined in RCW 9.94A.030; (c) the  
27 offense was a crime against persons as defined in RCW 43.43.830; (d)  
28 the offender has been convicted of a new crime in this state, another  
29 state, or federal court since the date of the offender's discharge  
30 under RCW 9.94A.637; (e) the offense is a class B felony and less than  
31 ten years have passed since the date the applicant was discharged under  
32 RCW 9.94A.637; (~~and~~) (f) the offense was a class C felony, other than  
33 a class C felony described in RCW 46.61.502(6) or 46.61.504(6), and  
34 less than five years have passed since the date the applicant was  
35 discharged under RCW 9.94A.637; or (g) the offense was a class C felony  
36 described in RCW 46.61.502(6) or 46.61.504(6) and less than ten years  
37 have passed since the applicant was discharged under RCW 9.94A.637.

1 (3) Once the court vacates a record of conviction under subsection  
2 (1) of this section, the fact that the offender has been convicted of  
3 the offense shall not be included in the offender's criminal history  
4 for purposes of determining a sentence in any subsequent conviction,  
5 and the offender shall be released from all penalties and disabilities  
6 resulting from the offense. For all purposes, including responding to  
7 questions on employment applications, an offender whose conviction has  
8 been vacated may state that the offender has never been convicted of  
9 that crime. Nothing in this section affects or prevents the use of an  
10 offender's prior conviction in a later criminal prosecution.

11 **Sec. 9.** RCW 9.94A.650 and 2002 c 175 s 9 are each amended to read  
12 as follows:

13 (1) This section applies to offenders who have never been  
14 previously convicted of a felony in this state, federal court, or  
15 another state, and who have never participated in a program of deferred  
16 prosecution for a felony, and who are convicted of a felony that is  
17 not:

18 (a) Classified as a violent offense or a sex offense under this  
19 chapter;

20 (b) Manufacture, delivery, or possession with intent to manufacture  
21 or deliver a controlled substance classified in Schedule I or II that  
22 is a narcotic drug or flunitrazepam classified in Schedule IV;

23 (c) Manufacture, delivery, or possession with intent to deliver a  
24 methamphetamine, its salts, isomers, and salts of its isomers as  
25 defined in RCW 69.50.206(d)(2); ~~((or))~~

26 (d) The selling for profit of any controlled substance or  
27 counterfeit substance classified in Schedule I, RCW 69.50.204, except  
28 leaves and flowering tops of marihuana; or

29 (e) Felony driving while under the influence of intoxicating liquor  
30 or any drug or felony physical control of a vehicle while under the  
31 influence of intoxicating liquor or any drug.

32 (2) In sentencing a first-time offender the court may waive the  
33 imposition of a sentence within the standard sentence range and impose  
34 a sentence which may include up to ninety days of confinement in a  
35 facility operated or utilized under contract by the county and a  
36 requirement that the offender refrain from committing new offenses.  
37 The sentence may also include a term of community supervision or

1 community custody as specified in subsection (3) of this section,  
2 which, in addition to crime-related prohibitions, may include  
3 requirements that the offender perform any one or more of the  
4 following:

5 (a) Devote time to a specific employment or occupation;

6 (b) Undergo available outpatient treatment for up to the period  
7 specified in subsection (3) of this section, or inpatient treatment not  
8 to exceed the standard range of confinement for that offense;

9 (c) Pursue a prescribed, secular course of study or vocational  
10 training;

11 (d) Remain within prescribed geographical boundaries and notify the  
12 community corrections officer prior to any change in the offender's  
13 address or employment;

14 (e) Report as directed to a community corrections officer; or

15 (f) Pay all court-ordered legal financial obligations as provided  
16 in RCW 9.94A.030 and/or perform community restitution work.

17 (3) The terms and statuses applicable to sentences under subsection  
18 (2) of this section are:

19 (a) For sentences imposed on or after July 25, 1999, for crimes  
20 committed before July 1, 2000, up to one year of community supervision.  
21 If treatment is ordered, the period of community supervision may  
22 include up to the period of treatment, but shall not exceed two years;  
23 and

24 (b) For crimes committed on or after July 1, 2000, up to one year  
25 of community custody unless treatment is ordered, in which case the  
26 period of community custody may include up to the period of treatment,  
27 but shall not exceed two years. Any term of community custody imposed  
28 under this section is subject to conditions and sanctions as authorized  
29 in this section and in RCW 9.94A.715 (2) and (3).

30 (4) The department shall discharge from community supervision any  
31 offender sentenced under this section before July 25, 1999, who has  
32 served at least one year of community supervision and has completed any  
33 treatment ordered by the court.

34 **Sec. 10.** RCW 9.94A.660 and 2005 c 460 s 1 are each amended to read  
35 as follows:

36 (1) An offender is eligible for the special drug offender  
37 sentencing alternative if:

1 (a) The offender is convicted of a felony that is not a violent  
2 offense or sex offense and the violation does not involve a sentence  
3 enhancement under RCW 9.94A.533 (3) or (4);

4 (b) The offender is convicted of a felony that is not a felony  
5 driving while under the influence of intoxicating liquor or any drug  
6 under RCW 46.61.502(6) or felony physical control of a vehicle while  
7 under the influence of intoxicating liquor or any drug under RCW  
8 46.61.504(6);

9 (c) The offender has no current or prior convictions for a sex  
10 offense at any time or violent offense within ten years before  
11 conviction of the current offense, in this state, another state, or the  
12 United States;

13 ((+e)) (d) For a violation of the Uniform Controlled Substances  
14 Act under chapter 69.50 RCW or a criminal solicitation to commit such  
15 a violation under chapter 9A.28 RCW, the offense involved only a small  
16 quantity of the particular controlled substance as determined by the  
17 judge upon consideration of such factors as the weight, purity,  
18 packaging, sale price, and street value of the controlled substance;

19 ((+d)) (e) The offender has not been found by the United States  
20 attorney general to be subject to a deportation detainer or order and  
21 does not become subject to a deportation order during the period of the  
22 sentence;

23 ((+e)) (f) The standard sentence range for the current offense is  
24 greater than one year; and

25 ((+f)) (g) The offender has not received a drug offender  
26 sentencing alternative more than once in the prior ten years before the  
27 current offense.

28 (2) A motion for a sentence under this section may be made by the  
29 court, the offender, or the state. If the sentencing court determines  
30 that the offender is eligible for this alternative, the court may order  
31 an examination of the offender. The examination shall, at a minimum,  
32 address the following issues:

33 (a) Whether the offender suffers from drug addiction;

34 (b) Whether the addiction is such that there is a probability that  
35 criminal behavior will occur in the future;

36 (c) Whether effective treatment for the offender's addiction is  
37 available from a provider that has been licensed or certified by the

1 division of alcohol and substance abuse of the department of social and  
2 health services; and

3 (d) Whether the offender and the community will benefit from the  
4 use of the alternative.

5 (3) The examination report must contain:

6 (a) Information on the issues required to be addressed in  
7 subsection (2) of this section; and

8 (b) A proposed treatment plan that must, at a minimum, contain:

9 (i) A proposed treatment provider that has been licensed or  
10 certified by the division of alcohol and substance abuse of the  
11 department of social and health services;

12 (ii) The recommended frequency and length of treatment, including  
13 both residential chemical dependency treatment and treatment in the  
14 community;

15 (iii) A proposed monitoring plan, including any requirements  
16 regarding living conditions, lifestyle requirements, and monitoring by  
17 family members and others; and

18 (iv) Recommended crime-related prohibitions and affirmative  
19 conditions.

20 (4) After receipt of the examination report, if the court  
21 determines that a sentence under this section is appropriate, the court  
22 shall waive imposition of a sentence within the standard sentence range  
23 and impose a sentence consisting of either a prison-based alternative  
24 under subsection (5) of this section or a residential chemical  
25 dependency treatment-based alternative under subsection (6) of this  
26 section. The residential chemical dependency treatment-based  
27 alternative is only available if the midpoint of the standard range is  
28 twenty-four months or less.

29 (5) The prison-based alternative shall include:

30 (a) A period of total confinement in a state facility for one-half  
31 of the midpoint of the standard sentence range. During incarceration  
32 in the state facility, offenders sentenced under this subsection shall  
33 undergo a comprehensive substance abuse assessment and receive, within  
34 available resources, treatment services appropriate for the offender.  
35 The treatment services shall be designed by the division of alcohol and  
36 substance abuse of the department of social and health services, in  
37 cooperation with the department of corrections;

1 (b) The remainder of the midpoint of the standard range as a term  
2 of community custody which must include appropriate substance abuse  
3 treatment in a program that has been approved by the division of  
4 alcohol and substance abuse of the department of social and health  
5 services. If the department finds that conditions have been willfully  
6 violated, the offender may be reclassified to serve the remaining  
7 balance of the original sentence. An offender who fails to complete  
8 the program or who is administratively terminated from the program  
9 shall be reclassified to serve the unexpired term of his or her  
10 sentence as ordered by the sentencing court;

11 (c) Crime-related prohibitions including a condition not to use  
12 illegal controlled substances;

13 (d) A requirement to submit to urinalysis or other testing to  
14 monitor that status; and

15 (e) A term of community custody pursuant to RCW 9.94A.715 to be  
16 imposed upon failure to complete or administrative termination from the  
17 special drug offender sentencing alternative program.

18 (6) The residential chemical dependency treatment-based alternative  
19 shall include:

20 (a) A term of community custody equal to one-half of the midpoint  
21 of the standard sentence range or two years, whichever is greater,  
22 conditioned on the offender entering and remaining in residential  
23 chemical dependency treatment certified under chapter 70.96A RCW for a  
24 period set by the court between three and six months. If the court  
25 imposes a term of community custody, the department shall, within  
26 available resources, make chemical dependency assessment and treatment  
27 services available to the offender during the term of community  
28 custody. The court shall impose, as conditions of community custody,  
29 treatment and other conditions as proposed in the plan under subsection  
30 (3)(b) of this section. The department may impose conditions and  
31 sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7),  
32 9.94A.737, and 9.94A.740. The court shall schedule a progress hearing  
33 during the period of residential chemical dependency treatment, and  
34 schedule a treatment termination hearing for three months before the  
35 expiration of the term of community custody;

36 (b) Before the progress hearing and treatment termination hearing,  
37 the treatment provider and the department shall submit written reports

1 to the court and parties regarding the offender's compliance with  
2 treatment and monitoring requirements, and recommendations regarding  
3 termination from treatment. At the hearing, the court may:

4 (i) Authorize the department to terminate the offender's community  
5 custody status on the expiration date determined under (a) of this  
6 subsection; or

7 (ii) Continue the hearing to a date before the expiration date of  
8 community custody, with or without modifying the conditions of  
9 community custody; or

10 (iii) Impose a term of total confinement equal to one-half the  
11 midpoint of the standard sentence range, followed by a term of  
12 community custody under RCW 9.94A.715;

13 (c) If the court imposes a term of total confinement under (b)(iii)  
14 of this subsection, the department shall, within available resources,  
15 make chemical dependency assessment and treatment services available to  
16 the offender during the terms of total confinement and community  
17 custody.

18 (7) If the court imposes a sentence under this section, the court  
19 may prohibit the offender from using alcohol or controlled substances  
20 and may require that the monitoring for controlled substances be  
21 conducted by the department or by a treatment alternatives to street  
22 crime program or a comparable court or agency-referred program. The  
23 offender may be required to pay thirty dollars per month while on  
24 community custody to offset the cost of monitoring. In addition, the  
25 court may impose any of the following conditions:

26 (a) Devote time to a specific employment or training;

27 (b) Remain within prescribed geographical boundaries and notify the  
28 court or the community corrections officer before any change in the  
29 offender's address or employment;

30 (c) Report as directed to a community corrections officer;

31 (d) Pay all court-ordered legal financial obligations;

32 (e) Perform community restitution work;

33 (f) Stay out of areas designated by the sentencing court;

34 (g) Such other conditions as the court may require such as  
35 affirmative conditions.

36 (8)(a) The court may bring any offender sentenced under this  
37 section back into court at any time on its own initiative to evaluate

1 the offender's progress in treatment or to determine if any violations  
2 of the conditions of the sentence have occurred.

3 (b) If the offender is brought back to court, the court may modify  
4 the terms of the community custody or impose sanctions under (c) of  
5 this subsection.

6 (c) The court may order the offender to serve a term of total  
7 confinement within the standard range of the offender's current offense  
8 at any time during the period of community custody if the offender  
9 violates the conditions of the sentence or if the offender is failing  
10 to make satisfactory progress in treatment.

11 (d) An offender ordered to serve a term of total confinement under  
12 (c) of this subsection shall receive credit for any time previously  
13 served under this section.

14 (9) If an offender sentenced to the prison-based alternative under  
15 subsection (5) of this section is found by the United States attorney  
16 general to be subject to a deportation order, a hearing shall be held  
17 by the department unless waived by the offender, and, if the department  
18 finds that the offender is subject to a valid deportation order, the  
19 department may administratively terminate the offender from the program  
20 and reclassify the offender to serve the remaining balance of the  
21 original sentence.

22 (10) An offender sentenced under this section shall be subject to  
23 all rules relating to earned release time with respect to any period  
24 served in total confinement.

25 (11) Costs of examinations and preparing treatment plans under  
26 subsections (2) and (3) of this section may be paid, at the option of  
27 the county, from funds provided to the county from the criminal justice  
28 treatment account under RCW 70.96A.350.

29 **Sec. 11.** RCW 9.94A.690 and 2000 c 28 s 21 are each amended to read  
30 as follows:

31 (1)(a) An offender is eligible to be sentenced to a work ethic camp  
32 if the offender:

33 (i) Is sentenced to a term of total confinement of not less than  
34 twelve months and one day or more than thirty-six months;

35 (ii) Has no current or prior convictions for any sex offenses or  
36 for violent offenses; and

1 (iii) Is not currently subject to a sentence for, or being  
2 prosecuted for, a violation of felony driving while under the influence  
3 of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of  
4 physical control of a vehicle while under the influence of intoxicating  
5 liquor or any drug (RCW 46.61.504(6)), a violation of the uniform  
6 controlled substances act, or a criminal solicitation to commit such a  
7 violation under chapter 9A.28 or 69.50 RCW.

8 (b) The length of the work ethic camp shall be at least one hundred  
9 twenty days and not more than one hundred eighty days.

10 (2) If the sentencing court determines that the offender is  
11 eligible for the work ethic camp and is likely to qualify under  
12 subsection (3) of this section, the judge shall impose a sentence  
13 within the standard sentence range and may recommend that the offender  
14 serve the sentence at a work ethic camp. In sentencing an offender to  
15 the work ethic camp, the court shall specify: (a) That upon completion  
16 of the work ethic camp the offender shall be released on community  
17 custody for any remaining time of total confinement; (b) the applicable  
18 conditions of supervision on community custody status as required by  
19 RCW 9.94A.700(4) and authorized by RCW 9.94A.700(5); and (c) that  
20 violation of the conditions may result in a return to total confinement  
21 for the balance of the offender's remaining time of confinement.

22 (3) The department shall place the offender in the work ethic camp  
23 program, subject to capacity, unless: (a) The department determines  
24 that the offender has physical or mental impairments that would prevent  
25 participation and completion of the program; (b) the department  
26 determines that the offender's custody level prevents placement in the  
27 program; (c) the offender refuses to agree to the terms and conditions  
28 of the program; (d) the offender has been found by the United States  
29 attorney general to be subject to a deportation detainer or order; or  
30 (e) the offender has participated in the work ethic camp program in the  
31 past.

32 (4) An offender who fails to complete the work ethic camp program,  
33 who is administratively terminated from the program, or who otherwise  
34 violates any conditions of supervision, as defined by the department,  
35 shall be reclassified to serve the unexpired term of his or her  
36 sentence as ordered by the sentencing court and shall be subject to all  
37 rules relating to earned release time.

1 (5) During the last two weeks prior to release from the work ethic  
2 camp program the department shall provide the offender with  
3 comprehensive transition training.

4 **Sec. 12.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are  
5 each reenacted and amended to read as follows:

6 TABLE 2  
7 CRIMES INCLUDED WITHIN  
8 EACH SERIOUSNESS LEVEL

9	XVI	Aggravated Murder 1 (RCW
10		10.95.020)
11	XV	Homicide by abuse (RCW 9A.32.055)
12		Malicious explosion 1 (RCW
13		70.74.280(1))
14		Murder 1 (RCW 9A.32.030)
15	XIV	Murder 2 (RCW 9A.32.050)
16		Trafficking 1 (RCW 9A.40.100(1))
17	XIII	Malicious explosion 2 (RCW
18		70.74.280(2))
19		Malicious placement of an explosive 1
20		(RCW 70.74.270(1))
21	XII	Assault 1 (RCW 9A.36.011)
22		Assault of a Child 1 (RCW 9A.36.120)
23		Malicious placement of an imitation
24		device 1 (RCW 70.74.272(1)(a))
25		Rape 1 (RCW 9A.44.040)
26		Rape of a Child 1 (RCW 9A.44.073)
27		Trafficking 2 (RCW 9A.40.100(2))
28	XI	Manslaughter 1 (RCW 9A.32.060)
29		Rape 2 (RCW 9A.44.050)
30		Rape of a Child 2 (RCW 9A.44.076)
31	X	Child Molestation 1 (RCW 9A.44.083)
32		Indecent Liberties (with forcible
33		compulsion) (RCW
34		9A.44.100(1)(a))
35		Kidnapping 1 (RCW 9A.40.020)

1 Leading Organized Crime (RCW  
2 9A.82.060(1)(a))  
3 Malicious explosion 3 (RCW  
4 70.74.280(3))  
5 Sexually Violent Predator Escape  
6 (RCW 9A.76.115)  
7 IX Assault of a Child 2 (RCW 9A.36.130)  
8 Explosive devices prohibited (RCW  
9 70.74.180)  
10 Hit and Run--Death (RCW  
11 46.52.020(4)(a))  
12 Homicide by Watercraft, by being  
13 under the influence of intoxicating  
14 liquor or any drug (RCW  
15 79A.60.050)  
16 Inciting Criminal Profiteering (RCW  
17 9A.82.060(1)(b))  
18 Malicious placement of an explosive 2  
19 (RCW 70.74.270(2))  
20 Robbery 1 (RCW 9A.56.200)  
21 Sexual Exploitation (RCW 9.68A.040)  
22 Vehicular Homicide, by being under  
23 the influence of intoxicating liquor  
24 or any drug (RCW 46.61.520)  
25 VIII Arson 1 (RCW 9A.48.020)  
26 Homicide by Watercraft, by the  
27 operation of any vessel in a  
28 reckless manner (RCW  
29 79A.60.050)  
30 Manslaughter 2 (RCW 9A.32.070)  
31 Promoting Prostitution 1 (RCW  
32 9A.88.070)  
33 Theft of Ammonia (RCW 69.55.010)  
34 Vehicular Homicide, by the operation  
35 of any vehicle in a reckless  
36 manner (RCW 46.61.520)  
37 VII Burglary 1 (RCW 9A.52.020)

1 Child Molestation 2 (RCW 9A.44.086)  
2 Civil Disorder Training (RCW  
3 9A.48.120)  
4 Dealing in depictions of minor  
5 engaged in sexually explicit  
6 conduct (RCW 9.68A.050)  
7 Drive-by Shooting (RCW 9A.36.045)  
8 Homicide by Watercraft, by disregard  
9 for the safety of others (RCW  
10 79A.60.050)  
11 Indecent Liberties (without forcible  
12 compulsion) (RCW 9A.44.100(1)  
13 (b) and (c))  
14 Introducing Contraband 1 (RCW  
15 9A.76.140)  
16 Malicious placement of an explosive 3  
17 (RCW 70.74.270(3))  
18 Negligently Causing Death By Use of  
19 a Signal Preemption Device  
20 (RCW 46.37.675)  
21 Sending, bringing into state depictions  
22 of minor engaged in sexually  
23 explicit conduct (RCW  
24 9.68A.060)  
25 Unlawful Possession of a Firearm in  
26 the first degree (RCW  
27 9.41.040(1))  
28 Use of a Machine Gun in Commission  
29 of a Felony (RCW 9.41.225)  
30 Vehicular Homicide, by disregard for  
31 the safety of others (RCW  
32 46.61.520)  
33 VI Bail Jumping with Murder 1 (RCW  
34 9A.76.170(3)(a))  
35 Bribery (RCW 9A.68.010)  
36 Incest 1 (RCW 9A.64.020(1))

1 Intimidating a Judge (RCW  
2 9A.72.160)  
3 Intimidating a Juror/Witness (RCW  
4 9A.72.110, 9A.72.130)  
5 Malicious placement of an imitation  
6 device 2 (RCW 70.74.272(1)(b))  
7 Rape of a Child 3 (RCW 9A.44.079)  
8 Theft of a Firearm (RCW 9A.56.300)  
9 Unlawful Storage of Ammonia (RCW  
10 69.55.020)  
11 V Abandonment of dependent person 1  
12 (RCW 9A.42.060)  
13 Advancing money or property for  
14 extortionate extension of credit  
15 (RCW 9A.82.030)  
16 Bail Jumping with class A Felony  
17 (RCW 9A.76.170(3)(b))  
18 Child Molestation 3 (RCW 9A.44.089)  
19 Criminal Mistreatment 1 (RCW  
20 9A.42.020)  
21 Custodial Sexual Misconduct 1 (RCW  
22 9A.44.160)  
23 Domestic Violence Court Order  
24 Violation (RCW 10.99.040,  
25 10.99.050, 26.09.300, 26.10.220,  
26 26.26.138, 26.50.110, 26.52.070,  
27 or 74.34.145)  
28 Driving While Under the Influence  
29 (RCW 46.61.502(6))  
30 Extortion 1 (RCW 9A.56.120)  
31 Extortionate Extension of Credit  
32 (RCW 9A.82.020)  
33 Extortionate Means to Collect  
34 Extensions of Credit (RCW  
35 9A.82.040)  
36 Incest 2 (RCW 9A.64.020(2))  
37 Kidnapping 2 (RCW 9A.40.030)

1 Perjury 1 (RCW 9A.72.020)  
2 Persistent prison misbehavior (RCW  
3 9.94.070)  
4 Physical Control of a Vehicle While  
5 Under the Influence (RCW  
6 46.61.504(6))  
7 Possession of a Stolen Firearm (RCW  
8 9A.56.310)  
9 Rape 3 (RCW 9A.44.060)  
10 Rendering Criminal Assistance 1  
11 (RCW 9A.76.070)  
12 Sexual Misconduct with a Minor 1  
13 (RCW 9A.44.093)  
14 Sexually Violating Human Remains  
15 (RCW 9A.44.105)  
16 Stalking (RCW 9A.46.110)  
17 Taking Motor Vehicle Without  
18 Permission 1 (RCW 9A.56.070)  
19 IV Arson 2 (RCW 9A.48.030)  
20 Assault 2 (RCW 9A.36.021)  
21 Assault 3 (of a Peace Officer with a  
22 Projectile Stun Gun) (RCW  
23 9A.36.031(1)(h))  
24 Assault by Watercraft (RCW  
25 79A.60.060)  
26 Bribing a Witness/Bribe Received by  
27 Witness (RCW 9A.72.090,  
28 9A.72.100)  
29 Cheating 1 (RCW 9.46.1961)  
30 Commercial Bribery (RCW  
31 9A.68.060)  
32 Counterfeiting (RCW 9.16.035(4))  
33 Endangerment with a Controlled  
34 Substance (RCW 9A.42.100)  
35 Escape 1 (RCW 9A.76.110)  
36 Hit and Run--Injury (RCW  
37 46.52.020(4)(b))

1 Hit and Run with Vessel--Injury  
2 Accident (RCW 79A.60.200(3))  
3 Identity Theft 1 (RCW 9.35.020(2))  
4 Indecent Exposure to Person Under  
5 Age Fourteen (subsequent sex  
6 offense) (RCW 9A.88.010)  
7 Influencing Outcome of Sporting  
8 Event (RCW 9A.82.070)  
9 Malicious Harassment (RCW  
10 9A.36.080)  
11 Residential Burglary (RCW  
12 9A.52.025)  
13 Robbery 2 (RCW 9A.56.210)  
14 Theft of Livestock 1 (RCW 9A.56.080)  
15 Threats to Bomb (RCW 9.61.160)  
16 Trafficking in Stolen Property 1 (RCW  
17 9A.82.050)  
18 Unlawful factoring of a credit card or  
19 payment card transaction (RCW  
20 9A.56.290(4)(b))  
21 Unlawful transaction of health  
22 coverage as a health care service  
23 contractor (RCW 48.44.016(3))  
24 Unlawful transaction of health  
25 coverage as a health maintenance  
26 organization (RCW 48.46.033(3))  
27 Unlawful transaction of insurance  
28 business (RCW 48.15.023(3))  
29 Unlicensed practice as an insurance  
30 professional (RCW 48.17.063(3))  
31 Use of Proceeds of Criminal  
32 Profiteering (RCW 9A.82.080 (1)  
33 and (2))

1 Vehicular Assault, by being under the  
2 influence of intoxicating liquor or  
3 any drug, or by the operation or  
4 driving of a vehicle in a reckless  
5 manner (RCW 46.61.522)  
6 Willful Failure to Return from  
7 Furlough (RCW 72.66.060)  
8 III Abandonment of dependent person 2  
9 (RCW 9A.42.070)  
10 Assault 3 (Except Assault 3 of a Peace  
11 Officer With a Projectile Stun  
12 Gun) (RCW 9A.36.031 except  
13 subsection (1)(h))  
14 Assault of a Child 3 (RCW 9A.36.140)  
15 Bail Jumping with class B or C Felony  
16 (RCW 9A.76.170(3)(c))  
17 Burglary 2 (RCW 9A.52.030)  
18 Communication with a Minor for  
19 Immoral Purposes (RCW  
20 9.68A.090)  
21 Criminal Gang Intimidation (RCW  
22 9A.46.120)  
23 Criminal Mistreatment 2 (RCW  
24 9A.42.030)  
25 Custodial Assault (RCW 9A.36.100)  
26 Cyberstalking (subsequent conviction  
27 or threat of death) (RCW  
28 9.61.260(3))  
29 Escape 2 (RCW 9A.76.120)  
30 Extortion 2 (RCW 9A.56.130)  
31 Harassment (RCW 9A.46.020)  
32 Intimidating a Public Servant (RCW  
33 9A.76.180)  
34 Introducing Contraband 2 (RCW  
35 9A.76.150)  
36 Malicious Injury to Railroad Property  
37 (RCW 81.60.070)

1 Negligently Causing Substantial Bodily  
2 Harm By Use of a Signal  
3 Preemption Device (RCW  
4 46.37.674)  
5 Patronizing a Juvenile Prostitute  
6 (RCW 9.68A.100)  
7 Perjury 2 (RCW 9A.72.030)  
8 Possession of Incendiary Device (RCW  
9 9.40.120)  
10 Possession of Machine Gun or Short-  
11 Barreled Shotgun or Rifle (RCW  
12 9.41.190)  
13 Promoting Prostitution 2 (RCW  
14 9A.88.080)  
15 Securities Act violation (RCW  
16 21.20.400)  
17 Tampering with a Witness (RCW  
18 9A.72.120)  
19 Telephone Harassment (subsequent  
20 conviction or threat of death)  
21 (RCW 9.61.230(2))  
22 Theft of Livestock 2 (RCW 9A.56.083)  
23 Trafficking in Stolen Property 2 (RCW  
24 9A.82.055)  
25 Unlawful Imprisonment (RCW  
26 9A.40.040)  
27 Unlawful possession of firearm in the  
28 second degree (RCW 9.41.040(2))  
29 Vehicular Assault, by the operation or  
30 driving of a vehicle with disregard  
31 for the safety of others (RCW  
32 46.61.522)  
33 Willful Failure to Return from Work  
34 Release (RCW 72.65.070)  
35 II Computer Trespass 1 (RCW  
36 9A.52.110)  
37 Counterfeiting (RCW 9.16.035(3))

1 Escape from Community Custody  
2 (RCW 72.09.310)  
3 Health Care False Claims (RCW  
4 48.80.030)  
5 Identity Theft 2 (RCW 9.35.020(3))  
6 Improperly Obtaining Financial  
7 Information (RCW 9.35.010)  
8 Malicious Mischief 1 (RCW  
9 9A.48.070)  
10 Possession of Stolen Property 1 (RCW  
11 9A.56.150)  
12 Theft 1 (RCW 9A.56.030)  
13 Theft of Rental, Leased, or Lease-  
14 purchased Property (valued at one  
15 thousand five hundred dollars or  
16 more) (RCW 9A.56.096(5)(a))  
17 Trafficking in Insurance Claims (RCW  
18 48.30A.015)  
19 Unlawful factoring of a credit card or  
20 payment card transaction (RCW  
21 9A.56.290(4)(a))  
22 Unlawful Practice of Law (RCW  
23 2.48.180)  
24 Unlicensed Practice of a Profession or  
25 Business (RCW 18.130.190(7))  
26 I Attempting to Elude a Pursuing Police  
27 Vehicle (RCW 46.61.024)  
28 False Verification for Welfare (RCW  
29 74.08.055)  
30 Forgery (RCW 9A.60.020)  
31 Fraudulent Creation or Revocation of a  
32 Mental Health Advance Directive  
33 (RCW 9A.60.060)  
34 Malicious Mischief 2 (RCW  
35 9A.48.080)  
36 Mineral Trespass (RCW 78.44.330)

1 Possession of Stolen Property 2 (RCW  
2 9A.56.160)  
3 Reckless Burning 1 (RCW 9A.48.040)  
4 Taking Motor Vehicle Without  
5 Permission 2 (RCW 9A.56.075)  
6 Theft 2 (RCW 9A.56.040)  
7 Theft of Rental, Leased, or Lease-  
8 purchased Property (valued at two  
9 hundred fifty dollars or more but  
10 less than one thousand five  
11 hundred dollars) (RCW  
12 9A.56.096(5)(b))  
13 Transaction of insurance business  
14 beyond the scope of licensure  
15 (RCW 48.17.063(4))  
16 Unlawful Issuance of Checks or Drafts  
17 (RCW 9A.56.060)  
18 Unlawful Possession of Fictitious  
19 Identification (RCW 9A.56.320)  
20 Unlawful Possession of Instruments of  
21 Financial Fraud (RCW  
22 9A.56.320)  
23 Unlawful Possession of Payment  
24 Instruments (RCW 9A.56.320)  
25 Unlawful Possession of a Personal  
26 Identification Device (RCW  
27 9A.56.320)  
28 Unlawful Production of Payment  
29 Instruments (RCW 9A.56.320)  
30 Unlawful Trafficking in Food Stamps  
31 (RCW 9.91.142)  
32 Unlawful Use of Food Stamps (RCW  
33 9.91.144)  
34 Vehicle Prowl 1 (RCW 9A.52.095)

35 **Sec. 13.** RCW 9.94A.411 and 2000 c 119 s 28 and 2000 c 28 s 17 are  
36 each reenacted and amended to read as follows:

37 (1) Decision not to prosecute.

1           STANDARD: A prosecuting attorney may decline to prosecute, even  
2 though technically sufficient evidence to prosecute exists, in  
3 situations where prosecution would serve no public purpose, would  
4 defeat the underlying purpose of the law in question or would result in  
5 decreased respect for the law.

6           GUIDELINE/COMMENTARY:

7           Examples

8           The following are examples of reasons not to prosecute which could  
9 satisfy the standard.

10          (a) Contrary to Legislative Intent - It may be proper to decline to  
11 charge where the application of criminal sanctions would be clearly  
12 contrary to the intent of the legislature in enacting the particular  
13 statute.

14          (b) Antiquated Statute - It may be proper to decline to charge  
15 where the statute in question is antiquated in that:

16           (i) It has not been enforced for many years; and

17           (ii) Most members of society act as if it were no longer in  
18 existence; and

19           (iii) It serves no deterrent or protective purpose in today's  
20 society; and

21           (iv) The statute has not been recently reconsidered by the  
22 legislature.

23          This reason is not to be construed as the basis for declining cases  
24 because the law in question is unpopular or because it is difficult to  
25 enforce.

26          (c) De Minimis Violation - It may be proper to decline to charge  
27 where the violation of law is only technical or insubstantial and where  
28 no public interest or deterrent purpose would be served by prosecution.

29          (d) Confinement on Other Charges - It may be proper to decline to  
30 charge because the accused has been sentenced on another charge to a  
31 lengthy period of confinement; and

32           (i) Conviction of the new offense would not merit any additional  
33 direct or collateral punishment;

34           (ii) The new offense is either a misdemeanor or a felony which is  
35 not particularly aggravated; and

36           (iii) Conviction of the new offense would not serve any significant  
37 deterrent purpose.

1 (e) Pending Conviction on Another Charge - It may be proper to  
2 decline to charge because the accused is facing a pending prosecution  
3 in the same or another county; and

4 (i) Conviction of the new offense would not merit any additional  
5 direct or collateral punishment;

6 (ii) Conviction in the pending prosecution is imminent;

7 (iii) The new offense is either a misdemeanor or a felony which is  
8 not particularly aggravated; and

9 (iv) Conviction of the new offense would not serve any significant  
10 deterrent purpose.

11 (f) High Disproportionate Cost of Prosecution - It may be proper to  
12 decline to charge where the cost of locating or transporting, or the  
13 burden on, prosecution witnesses is highly disproportionate to the  
14 importance of prosecuting the offense in question. This reason should  
15 be limited to minor cases and should not be relied upon in serious  
16 cases.

17 (g) Improper Motives of Complainant - It may be proper to decline  
18 charges because the motives of the complainant are improper and  
19 prosecution would serve no public purpose, would defeat the underlying  
20 purpose of the law in question or would result in decreased respect for  
21 the law.

22 (h) Immunity - It may be proper to decline to charge where immunity  
23 is to be given to an accused in order to prosecute another where the  
24 accused's information or testimony will reasonably lead to the  
25 conviction of others who are responsible for more serious criminal  
26 conduct or who represent a greater danger to the public interest.

27 (i) Victim Request - It may be proper to decline to charge because  
28 the victim requests that no criminal charges be filed and the case  
29 involves the following crimes or situations:

30 (i) Assault cases where the victim has suffered little or no  
31 injury;

32 (ii) Crimes against property, not involving violence, where no  
33 major loss was suffered;

34 (iii) Where doing so would not jeopardize the safety of society.

35 Care should be taken to insure that the victim's request is freely  
36 made and is not the product of threats or pressure by the accused.

37 The presence of these factors may also justify the decision to  
38 dismiss a prosecution which has been commenced.

1 Notification

2 The prosecutor is encouraged to notify the victim, when practical,  
3 and the law enforcement personnel, of the decision not to prosecute.

4 (2) Decision to prosecute.

5 (a) STANDARD:

6 Crimes against persons will be filed if sufficient admissible  
7 evidence exists, which, when considered with the most plausible,  
8 reasonably foreseeable defense that could be raised under the evidence,  
9 would justify conviction by a reasonable and objective fact-finder.  
10 With regard to offenses prohibited by RCW 9A.44.040, 9A.44.050,  
11 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, 9A.44.089, and  
12 9A.64.020 the prosecutor should avoid prefiling agreements or  
13 diversions intended to place the accused in a program of treatment or  
14 counseling, so that treatment, if determined to be beneficial, can be  
15 provided pursuant to RCW 9.94A.670.

16 Crimes against property/other crimes will be filed if the  
17 admissible evidence is of such convincing force as to make it probable  
18 that a reasonable and objective fact-finder would convict after hearing  
19 all the admissible evidence and the most plausible defense that could  
20 be raised.

21 See table below for the crimes within these categories.

22 CATEGORIZATION OF CRIMES FOR PROSECUTING STANDARDS

23 CRIMES AGAINST PERSONS

24 Aggravated Murder

25 1st Degree Murder

26 2nd Degree Murder

27 1st Degree Manslaughter

28 2nd Degree Manslaughter

29 1st Degree Kidnapping

30 2nd Degree Kidnapping

31 1st Degree Assault

32 2nd Degree Assault

33 3rd Degree Assault

34 1st Degree Assault of a Child

35 2nd Degree Assault of a Child

36 3rd Degree Assault of a Child

37 1st Degree Rape

38 2nd Degree Rape

1 3rd Degree Rape  
2 1st Degree Rape of a Child  
3 2nd Degree Rape of a Child  
4 3rd Degree Rape of a Child  
5 1st Degree Robbery  
6 2nd Degree Robbery  
7 1st Degree Arson  
8 1st Degree Burglary  
9 1st Degree Extortion  
10 2nd Degree Extortion  
11 Indecent Liberties  
12 Incest  
13 Vehicular Homicide  
14 Vehicular Assault  
15 1st Degree Child Molestation  
16 2nd Degree Child Molestation  
17 3rd Degree Child Molestation  
18 1st Degree Promoting Prostitution  
19 Intimidating a Juror  
20 Communication with a Minor  
21 Intimidating a Witness  
22 Intimidating a Public Servant  
23 Bomb Threat (if against person)  
24 Unlawful Imprisonment  
25 Promoting a Suicide Attempt  
26 Riot (if against person)  
27 Stalking  
28 Custodial Assault  
29 Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050,  
30 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145)  
31 Counterfeiting (if a violation of RCW 9.16.035(4))  
32 Felony Driving a Motor Vehicle While Under the Influence of  
33 Intoxicating Liquor or Any Drug (RCW 46.61.502(6))  
34 Felony Physical Control of a Motor Vehicle While Under the  
35 Influence of Intoxicating Liquor or Any Drug (RCW 46.61.504(6))  
36 CRIMES AGAINST PROPERTY/OTHER CRIMES  
37 2nd Degree Arson  
38 1st Degree Escape

1 2nd Degree Escape  
2 2nd Degree Burglary  
3 1st Degree Theft  
4 2nd Degree Theft  
5 1st Degree Perjury  
6 2nd Degree Perjury  
7 1st Degree Introducing Contraband  
8 2nd Degree Introducing Contraband  
9 1st Degree Possession of Stolen Property  
10 2nd Degree Possession of Stolen Property  
11 Bribery  
12 Bribing a Witness  
13 Bribe received by a Witness  
14 Bomb Threat (if against property)  
15 1st Degree Malicious Mischief  
16 2nd Degree Malicious Mischief  
17 1st Degree Reckless Burning  
18 Taking a Motor Vehicle without Authorization  
19 Forgery  
20 2nd Degree Promoting Prostitution  
21 Tampering with a Witness  
22 Trading in Public Office  
23 Trading in Special Influence  
24 Receiving/Granting Unlawful Compensation  
25 Bigamy  
26 Eluding a Pursuing Police Vehicle  
27 Willful Failure to Return from Furlough  
28 Escape from Community Custody  
29 Riot (if against property)  
30 1st Degree Theft of Livestock  
31 2nd Degree Theft of Livestock

32 ALL OTHER UNCLASSIFIED FELONIES

33 Selection of Charges/Degree of Charge

34 (i) The prosecutor should file charges which adequately describe  
35 the nature of defendant's conduct. Other offenses may be charged only  
36 if they are necessary to ensure that the charges:

37 (A) Will significantly enhance the strength of the state's case at  
38 trial; or

1 (B) Will result in restitution to all victims.

2 (ii) The prosecutor should not overcharge to obtain a guilty plea.

3 Overcharging includes:

4 (A) Charging a higher degree;

5 (B) Charging additional counts.

6 This standard is intended to direct prosecutors to charge those  
7 crimes which demonstrate the nature and seriousness of a defendant's  
8 criminal conduct, but to decline to charge crimes which are not  
9 necessary to such an indication. Crimes which do not merge as a matter  
10 of law, but which arise from the same course of conduct, do not all  
11 have to be charged.

12 (b) GUIDELINES/COMMENTARY:

13 (i) Police Investigation

14 A prosecuting attorney is dependent upon law enforcement agencies  
15 to conduct the necessary factual investigation which must precede the  
16 decision to prosecute. The prosecuting attorney shall ensure that a  
17 thorough factual investigation has been conducted before a decision to  
18 prosecute is made. In ordinary circumstances the investigation should  
19 include the following:

20 (A) The interviewing of all material witnesses, together with the  
21 obtaining of written statements whenever possible;

22 (B) The completion of necessary laboratory tests; and

23 (C) The obtaining, in accordance with constitutional requirements,  
24 of the suspect's version of the events.

25 If the initial investigation is incomplete, a prosecuting attorney  
26 should insist upon further investigation before a decision to prosecute  
27 is made, and specify what the investigation needs to include.

28 (ii) Exceptions

29 In certain situations, a prosecuting attorney may authorize filing  
30 of a criminal complaint before the investigation is complete if:

31 (A) Probable cause exists to believe the suspect is guilty; and

32 (B) The suspect presents a danger to the community or is likely to  
33 flee if not apprehended; or

34 (C) The arrest of the suspect is necessary to complete the  
35 investigation of the crime.

36 In the event that the exception to the standard is applied, the  
37 prosecuting attorney shall obtain a commitment from the law enforcement

1 agency involved to complete the investigation in a timely manner. If  
2 the subsequent investigation does not produce sufficient evidence to  
3 meet the normal charging standard, the complaint should be dismissed.

4 (iii) Investigation Techniques

5 The prosecutor should be fully advised of the investigatory  
6 techniques that were used in the case investigation including:

- 7 (A) Polygraph testing;
- 8 (B) Hypnosis;
- 9 (C) Electronic surveillance;
- 10 (D) Use of informants.

11 (iv) Pre-Filing Discussions with Defendant

12 Discussions with the defendant or his/her representative regarding  
13 the selection or disposition of charges may occur prior to the filing  
14 of charges, and potential agreements can be reached.

15 (v) Pre-Filing Discussions with Victim(s)

16 Discussions with the victim(s) or victims' representatives  
17 regarding the selection or disposition of charges may occur before the  
18 filing of charges. The discussions may be considered by the prosecutor  
19 in charging and disposition decisions, and should be considered before  
20 reaching any agreement with the defendant regarding these decisions.

21 **Sec. 14.** RCW 13.40.0357 and 2004 c 117 s 1 are each amended to  
22 read as follows:

23 **DESCRIPTION AND OFFENSE CATEGORY**

		JUVENILE DISPOSITION
JUVENILE		CATEGORY FOR
DISPOSITION		ATTEMPT, BAILJUMP,
OFFENSE		CONSPIRACY, OR
CATEGORY	DESCRIPTION (RCW CITATION)	SOLICITATION

29 .....

30 **Arson and Malicious Mischief**

31	A	Arson 1 (9A.48.020)	B+
32	B	Arson 2 (9A.48.030)	C
33	C	Reckless Burning 1 (9A.48.040)	D
34	D	Reckless Burning 2 (9A.48.050)	E
35	B	Malicious Mischief 1 (9A.48.070)	C

1	C	Malicious Mischief 2 (9A.48.080)	D
2	D	Malicious Mischief 3 (9A.48.090(2) (a) and	
3		(c))	E
4	E	Malicious Mischief 3 (9A.48.090(2)(b))	E
5	E	Tampering with Fire Alarm Apparatus	
6		(9.40.100)	E
7	E	Tampering with Fire Alarm Apparatus with	
8		Intent to Commit Arson (9.40.105)	E
9	A	Possession of Incendiary Device (9.40.120)	B+
10		<b>Assault and Other Crimes Involving</b>	
11		<b>Physical Harm</b>	
12	A	Assault 1 (9A.36.011)	B+
13	B+	Assault 2 (9A.36.021)	C+
14	C+	Assault 3 (9A.36.031)	D+
15	D+	Assault 4 (9A.36.041)	E
16	B+	Drive-By Shooting (9A.36.045)	C+
17	D+	Reckless Endangerment (9A.36.050)	E
18	C+	Promoting Suicide Attempt (9A.36.060)	D+
19	D+	Coercion (9A.36.070)	E
20	C+	Custodial Assault (9A.36.100)	D+
21		<b>Burglary and Trespass</b>	
22	B+	Burglary 1 (9A.52.020)	C+
23	B	Residential Burglary (9A.52.025)	C
24	B	Burglary 2 (9A.52.030)	C
25	D	Burglary Tools (Possession of) (9A.52.060)	E
26	D	Criminal Trespass 1 (9A.52.070)	E
27	E	Criminal Trespass 2 (9A.52.080)	E
28	C	Mineral Trespass (78.44.330)	C
29	C	Vehicle Prowling 1 (9A.52.095)	D
30	D	Vehicle Prowling 2 (9A.52.100)	E
31		<b>Drugs</b>	
32	E	Possession/Consumption of Alcohol	
33		(66.44.270)	E
34	C	Illegally Obtaining Legend Drug	
35		(69.41.020)	D

1	C+	Sale, Delivery, Possession of Legend Drug	
2		with Intent to Sell (69.41.030(2)(a))	D+
3	E	Possession of Legend Drug	
4		(69.41.030(2)(b))	E
5	B+	Violation of Uniform Controlled Substances	
6		Act - Narcotic, Methamphetamine, or	
7		Flunitrazepam Sale (69.50.401(2) (a) or	
8		(b))	B+
9	C	Violation of Uniform Controlled Substances	
10		Act - Nonnarcotic Sale (69.50.401(2)(c))	C
11	E	Possession of Marihuana <40 grams	
12		(69.50.4014)	E
13	C	Fraudulently Obtaining Controlled	
14		Substance (69.50.403)	C
15	C+	Sale of Controlled Substance for Profit	
16		(69.50.410)	C+
17	E	Unlawful Inhalation (9.47A.020)	E
18	B	Violation of Uniform Controlled Substances	
19		Act - Narcotic, Methamphetamine, or	
20		Flunitrazepam Counterfeit Substances	
21		(69.50.4011(2) (a) or (b))	B
22	C	Violation of Uniform Controlled Substances	
23		Act - Nonnarcotic Counterfeit Substances	
24		(69.50.4011(2) (c), (d), or (e))	C
25	C	Violation of Uniform Controlled Substances	
26		Act - Possession of a Controlled Substance	
27		(69.50.4013)	C
28	C	Violation of Uniform Controlled Substances	
29		Act - Possession of a Controlled Substance	
30		(69.50.4012)	C
31		<b>Firearms and Weapons</b>	
32	B	Theft of Firearm (9A.56.300)	C
33	B	Possession of Stolen Firearm (9A.56.310)	C
34	E	Carrying Loaded Pistol Without Permit	
35		(9.41.050)	E
36	C	Possession of Firearms by Minor (<18)	
37		(9.41.040(2)(a)(iii))	C

1	D+	Possession of Dangerous Weapon	
2		(9.41.250)	E
3	D	Intimidating Another Person by use of	
4		Weapon (9.41.270)	E
5		<b>Homicide</b>	
6	A+	Murder 1 (9A.32.030)	A
7	A+	Murder 2 (9A.32.050)	B+
8	B+	Manslaughter 1 (9A.32.060)	C+
9	C+	Manslaughter 2 (9A.32.070)	D+
10	B+	Vehicular Homicide (46.61.520)	C+
11		<b>Kidnapping</b>	
12	A	Kidnap 1 (9A.40.020)	B+
13	B+	Kidnap 2 (9A.40.030)	C+
14	C+	Unlawful Imprisonment (9A.40.040)	D+
15		<b>Obstructing Governmental Operation</b>	
16	D	Obstructing a Law Enforcement Officer	
17		(9A.76.020)	E
18	E	Resisting Arrest (9A.76.040)	E
19	B	Introducing Contraband 1 (9A.76.140)	C
20	C	Introducing Contraband 2 (9A.76.150)	D
21	E	Introducing Contraband 3 (9A.76.160)	E
22	B+	Intimidating a Public Servant (9A.76.180)	C+
23	B+	Intimidating a Witness (9A.72.110)	C+
24		<b>Public Disturbance</b>	
25	C+	Riot with Weapon (9A.84.010(2)(b))	D+
26	D+	Riot Without Weapon (9A.84.010(2)(a))	E
27	E	Failure to Disperse (9A.84.020)	E
28	E	Disorderly Conduct (9A.84.030)	E
29		<b>Sex Crimes</b>	
30	A	Rape 1 (9A.44.040)	B+
31	A-	Rape 2 (9A.44.050)	B+
32	C+	Rape 3 (9A.44.060)	D+
33	A-	Rape of a Child 1 (9A.44.073)	B+
34	B+	Rape of a Child 2 (9A.44.076)	C+
35	B	Incest 1 (9A.64.020(1))	C
36	C	Incest 2 (9A.64.020(2))	D

1	D+	Indecent Exposure (Victim <14)	
2		(9A.88.010)	E
3	E	Indecent Exposure (Victim 14 or over)	
4		(9A.88.010)	E
5	B+	Promoting Prostitution 1 (9A.88.070)	C+
6	C+	Promoting Prostitution 2 (9A.88.080)	D+
7	E	O & A (Prostitution) (9A.88.030)	E
8	B+	Indecent Liberties (9A.44.100)	C+
9	A-	Child Molestation 1 (9A.44.083)	B+
10	B	Child Molestation 2 (9A.44.086)	C+
11		<b>Theft, Robbery, Extortion, and Forgery</b>	
12	B	Theft 1 (9A.56.030)	C
13	C	Theft 2 (9A.56.040)	D
14	D	Theft 3 (9A.56.050)	E
15	B	Theft of Livestock 1 and 2 (9A.56.080 and	
16		9A.56.083)	C
17	C	Forgery (9A.60.020)	D
18	A	Robbery 1 (9A.56.200)	B+
19	B+	Robbery 2 (9A.56.210)	C+
20	B+	Extortion 1 (9A.56.120)	C+
21	C+	Extortion 2 (9A.56.130)	D+
22	C	Identity Theft 1 (9.35.020(2))	D
23	D	Identity Theft 2 (9.35.020(3))	E
24	D	Improperly Obtaining Financial Information	
25		(9.35.010)	E
26	B	Possession of Stolen Property 1	
27		(9A.56.150)	C
28	C	Possession of Stolen Property 2	
29		(9A.56.160)	D
30	D	Possession of Stolen Property 3	
31		(9A.56.170)	E
32	C	Taking Motor Vehicle Without Permission	
33		1 and 2 (9A.56.070 and 9A.56.075)	D
34		<b>Motor Vehicle Related Crimes</b>	
35	E	Driving Without a License (46.20.005)	E
36	B+	Hit and Run - Death (46.52.020(4)(a))	C+
37	C	Hit and Run - Injury (46.52.020(4)(b))	D

1	D	Hit and Run-Attended (46.52.020(5))	E
2	E	Hit and Run-Unattended (46.52.010)	E
3	C	Vehicular Assault (46.61.522)	D
4	C	Attempting to Elude Pursuing Police	
5		Vehicle (46.61.024)	D
6	E	Reckless Driving (46.61.500)	E
7	D	Driving While Under the Influence	
8		(46.61.502 and 46.61.504)	E
9	<u>B+</u>	<u>Felony Driving While Under the Influence</u>	
10		<u>(46.61.502(6))</u>	<u>B</u>
11	<u>B+</u>	<u>Felony Physical Control of a Vehicle While</u>	
12		<u>Under the Influence (46.61.504(6))</u>	<u>B</u>
13		<b>Other</b>	
14	B	Animal Cruelty 1 (16.52.205)	C
15	B	Bomb Threat (9.61.160)	C
16	C	Escape 1 <sup>1</sup> (9A.76.110)	C
17	C	Escape 2 <sup>1</sup> (9A.76.120)	C
18	D	Escape 3 (9A.76.130)	E
19	E	Obscene, Harassing, Etc., Phone Calls	
20		(9.61.230)	E
21	A	Other Offense Equivalent to an Adult Class	
22		A Felony	B+
23	B	Other Offense Equivalent to an Adult Class	
24		B Felony	C
25	C	Other Offense Equivalent to an Adult Class	
26		C Felony	D
27	D	Other Offense Equivalent to an Adult Gross	
28		Misdemeanor	E
29	E	Other Offense Equivalent to an Adult	
30		Misdemeanor	E
31	V	Violation of Order of Restitution,	
32		Community Supervision, or Confinement	
33		(13.40.200) <sup>2</sup>	V

34 <sup>1</sup>Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses  
35 and the standard range is established as follows:

36 1st escape or attempted escape during 12-month period - 4 weeks  
37 confinement

1 2nd escape or attempted escape during 12-month period - 8 weeks  
2 confinement

3 3rd and subsequent escape or attempted escape during 12-month  
4 period - 12 weeks confinement

5 <sup>2</sup>If the court finds that a respondent has violated terms of an order,  
6 it may impose a penalty of up to 30 days of confinement.

7 **JUVENILE SENTENCING STANDARDS**

8 This schedule must be used for juvenile offenders. The court may  
9 select sentencing option A, B, C, D, or RCW 13.40.167.

10 **OPTION A**

11 **JUVENILE OFFENDER SENTENCING GRID**  
12 **STANDARD RANGE**

13 A+ 180 WEEKS TO AGE 21 YEARS

14 A 103 WEEKS TO 129 WEEKS

15

16

17

18

19

20

21

22

23

A-	15-36	52-65	80-100	103-129
	WEEKS	WEEKS	WEEKS	WEEKS
	EXCEPT			
	30-40			
	WEEKS FOR			
	15-17			
	YEAR OLDS			

24

25

26

Current Offense Category	B+	15-36	52-65	80-100	103-129
		WEEKS	WEEKS	WEEKS	WEEKS

27

28

29

B	LOCAL SANCTIONS (LS)	15-36 WEEKS	52-65 WEEKS
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30

31

32

C+	LS	15-36 WEEKS
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33

34

C	LS	15-36 WEEKS
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35 Local Sanctions:

36 0 to 30 Days

37 D+ LS 0 to 12 Months Community Supervision

38 0 to 150 Hours Community Restitution

39 D LS \$0 to \$500 Fine

E LS

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0 1 2 3 4  
or more

PRIOR ADJUDICATIONS

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

**OPTION B**

**SUSPENDED DISPOSITION ALTERNATIVE**

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

1 (3) An offender is ineligible for the suspended disposition option  
2 under this section if the offender is:

3 (a) Adjudicated of an A+ offense;

4 (b) Fourteen years of age or older and is adjudicated of one or  
5 more of the following offenses:

6 (i) A class A offense, or an attempt, conspiracy, or solicitation  
7 to commit a class A offense;

8 (ii) Manslaughter in the first degree (RCW 9A.32.060); or

9 (iii) Assault in the second degree (RCW 9A.36.021), extortion in  
10 the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW  
11 9A.40.030), robbery in the second degree (RCW 9A.56.210), residential  
12 burglary (RCW 9A.52.025), burglary in the second degree (RCW  
13 9A.52.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW  
14 46.61.520), hit and run death (RCW 46.52.020(4)(a)), intimidating a  
15 witness (RCW 9A.72.110), violation of the uniform controlled substances  
16 act (RCW 69.50.401 (2)(a) and (b)), or manslaughter 2 (RCW 9A.32.070),  
17 when the offense includes infliction of bodily harm upon another or  
18 when during the commission or immediate withdrawal from the offense the  
19 respondent was armed with a deadly weapon;

20 (c) Ordered to serve a disposition for a firearm violation under  
21 RCW 13.40.193; or

22 (d) Adjudicated of a sex offense as defined in RCW 9.94A.030.

23 **OR**

24 **OPTION C**

25 **CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE**

26 If the juvenile offender is subject to a standard range disposition  
27 of local sanctions or 15 to 36 weeks of confinement and has not  
28 committed an A- or B+ offense, the court may impose a disposition under  
29 RCW 13.40.160(4) and 13.40.165.

30 **OR**

31 **OPTION D**

32 **MANIFEST INJUSTICE**

33 If the court determines that a disposition under option A, B, or C  
34 would effectuate a manifest injustice, the court shall impose a  
35 disposition outside the standard range under RCW 13.40.160(2).

1       **Sec. 15.** RCW 46.20.311 and 2005 c 314 s 308 are each amended to  
2 read as follows:

3       (1)(a) The department shall not suspend a driver's license or  
4 privilege to drive a motor vehicle on the public highways for a fixed  
5 period of more than one year, except as specifically permitted under  
6 RCW 46.20.267, 46.20.342, or other provision of law.

7       (b) Except for a suspension under RCW 46.20.267, 46.20.289,  
8 46.20.291(5), 46.61.740, or 74.20A.320, whenever the license or driving  
9 privilege of any person is suspended by reason of a conviction, a  
10 finding that a traffic infraction has been committed, pursuant to  
11 chapter 46.29 RCW, or pursuant to RCW 46.20.291 or 46.20.308, the  
12 suspension shall remain in effect until the person gives and thereafter  
13 maintains proof of financial responsibility for the future as provided  
14 in chapter 46.29 RCW.

15       (c) If the suspension is the result of a nonfelony violation of RCW  
16 46.61.502 or 46.61.504, the department shall determine the person's  
17 eligibility for licensing based upon the reports provided by the  
18 alcoholism agency or probation department designated under RCW  
19 46.61.5056 and shall deny reinstatement until enrollment and  
20 participation in an approved program has been established and the  
21 person is otherwise qualified. If the suspension is the result of a  
22 violation of RCW 46.61.502(6) or 46.61.504(6), the department shall  
23 determine the person's eligibility for licensing based upon the reports  
24 provided by the alcohol or drug dependency agency required under RCW  
25 46.61.524 and shall deny reinstatement until satisfactory progress in  
26 an approved program has been established and the person is otherwise  
27 qualified. If the suspension is the result of a violation of RCW  
28 46.61.502 or 46.61.504, and the person is required pursuant to RCW  
29 46.20.720 to drive only a motor vehicle equipped with a functioning  
30 ignition interlock, the department shall determine the person's  
31 eligibility for licensing based upon written verification by a company  
32 doing business in the state that it has installed the required device  
33 on a vehicle owned or operated by the person seeking reinstatement.  
34 If, based upon notification from the interlock provider or otherwise,  
35 the department determines that an interlock required under RCW  
36 46.20.720 is no longer installed or functioning as required, the  
37 department shall suspend the person's license or privilege to drive.  
38 Whenever the license or driving privilege of any person is suspended or

1 revoked as a result of noncompliance with an ignition interlock  
2 requirement, the suspension shall remain in effect until the person  
3 provides notice issued by a company doing business in the state that a  
4 vehicle owned or operated by the person is equipped with a functioning  
5 ignition interlock device.

6 (d) Whenever the license or driving privilege of any person is  
7 suspended as a result of certification of noncompliance with a child  
8 support order under chapter 74.20A RCW or a residential or visitation  
9 order, the suspension shall remain in effect until the person provides  
10 a release issued by the department of social and health services  
11 stating that the person is in compliance with the order.

12 (e)(i) The department shall not issue to the person a new,  
13 duplicate, or renewal license until the person pays a reissue fee of  
14 seventy-five dollars.

15 (ii) If the suspension is the result of a violation of RCW  
16 46.61.502 or 46.61.504, or is the result of administrative action under  
17 RCW 46.20.308, the reissue fee shall be one hundred fifty dollars.

18 (2)(a) Any person whose license or privilege to drive a motor  
19 vehicle on the public highways has been revoked, unless the revocation  
20 was for a cause which has been removed, is not entitled to have the  
21 license or privilege renewed or restored until: (i) After the  
22 expiration of one year from the date the license or privilege to drive  
23 was revoked; (ii) after the expiration of the applicable revocation  
24 period provided by RCW 46.20.3101 or 46.61.5055; (iii) after the  
25 expiration of two years for persons convicted of vehicular homicide; or  
26 (iv) after the expiration of the applicable revocation period provided  
27 by RCW 46.20.265.

28 (b)(i) After the expiration of the appropriate period, the person  
29 may make application for a new license as provided by law together with  
30 a reissue fee in the amount of seventy-five dollars.

31 (ii) If the revocation is the result of a violation of RCW  
32 46.20.308, 46.61.502, or 46.61.504, the reissue fee shall be one  
33 hundred fifty dollars. If the revocation is the result of a nonfelony  
34 violation of RCW 46.61.502 or 46.61.504, the department shall determine  
35 the person's eligibility for licensing based upon the reports provided  
36 by the alcoholism agency or probation department designated under RCW  
37 46.61.5056 and shall deny reissuance of a license, permit, or privilege  
38 to drive until enrollment and participation in an approved program has

1 been established and the person is otherwise qualified. If the  
2 suspension is the result of a violation of RCW 46.61.502(6) or  
3 46.61.504(6), the department shall determine the person's eligibility  
4 for licensing based upon the reports provided by the alcohol or drug  
5 dependency agency required under RCW 46.61.524 and shall deny  
6 reinstatement until satisfactory progress in an approved program has  
7 been established and the person is otherwise qualified. If the  
8 revocation is the result of a violation of RCW 46.61.502 or 46.61.504,  
9 and the person is required pursuant to RCW 46.20.720 to drive only a  
10 motor vehicle equipped with a functioning ignition interlock or other  
11 biological or technical device, the department shall determine the  
12 person's eligibility for licensing based upon written verification by  
13 a company doing business in the state that it has installed the  
14 required device on a vehicle owned or operated by the person applying  
15 for a new license. If, following issuance of a new license, the  
16 department determines, based upon notification from the interlock  
17 provider or otherwise, that an interlock required under RCW 46.20.720  
18 is no longer functioning, the department shall suspend the person's  
19 license or privilege to drive until the department has received written  
20 verification from an interlock provider that a functioning interlock is  
21 installed.

22 (c) Except for a revocation under RCW 46.20.265, the department  
23 shall not then issue a new license unless it is satisfied after  
24 investigation of the driving ability of the person that it will be safe  
25 to grant the privilege of driving a motor vehicle on the public  
26 highways, and until the person gives and thereafter maintains proof of  
27 financial responsibility for the future as provided in chapter 46.29  
28 RCW. For a revocation under RCW 46.20.265, the department shall not  
29 issue a new license unless it is satisfied after investigation of the  
30 driving ability of the person that it will be safe to grant that person  
31 the privilege of driving a motor vehicle on the public highways.

32 (3)(a) Whenever the driver's license of any person is suspended  
33 pursuant to Article IV of the nonresident violators compact or RCW  
34 46.23.020 or 46.20.289 or 46.20.291(5), the department shall not issue  
35 to the person any new or renewal license until the person pays a  
36 reissue fee of seventy-five dollars.

37 (b) If the suspension is the result of a violation of the laws of  
38 this or any other state, province, or other jurisdiction involving (i)

1 the operation or physical control of a motor vehicle upon the public  
2 highways while under the influence of intoxicating liquor or drugs, or  
3 (ii) the refusal to submit to a chemical test of the driver's blood  
4 alcohol content, the reissue fee shall be one hundred fifty dollars.

5 **Sec. 16.** RCW 46.61.524 and 2001 c 64 s 7 are each amended to read  
6 as follows:

7 (1) A person convicted under RCW 46.61.502(6), 46.61.504(6),  
8 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community  
9 custody imposed under RCW 9.94A.545 or community placement imposed  
10 under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or  
11 drug dependency agency approved by the department of social and health  
12 services or a qualified probation department, as defined under RCW  
13 46.61.516 that has been approved by the department of social and health  
14 services. This report shall be forwarded to the department of  
15 licensing. If the person is found to have an alcohol or drug problem  
16 that requires treatment, the person shall complete treatment in a  
17 program approved by the department of social and health services under  
18 chapter 70.96A RCW. If the person is found not to have an alcohol or  
19 drug problem that requires treatment, he or she shall complete a course  
20 in an information school approved by the department of social and  
21 health services under chapter 70.96A RCW. The convicted person shall  
22 pay all costs for any evaluation, education, or treatment required by  
23 this section, unless the person is eligible for an existing program  
24 offered or approved by the department of social and health services.  
25 Nothing in chapter 348, Laws of 1991 requires the addition of new  
26 treatment or assessment facilities nor affects the department of social  
27 and health services use of existing programs and facilities authorized  
28 by law.

29 (2) As provided for under RCW 46.20.285, the department shall  
30 revoke the license, permit to drive, or a nonresident privilege of a  
31 person convicted of vehicular homicide under RCW 46.61.520 or vehicular  
32 assault under RCW 46.61.522. The department shall determine the  
33 eligibility of a person convicted of vehicular homicide under RCW  
34 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to  
35 receive a license based upon the report provided by the designated  
36 alcoholism treatment facility or probation department, and shall deny

1 reinstatement until satisfactory progress in an approved program has  
2 been established and the person is otherwise qualified.

3 **Sec. 17.** RCW 46.61.5152 and 1998 c 41 s 9 are each amended to read  
4 as follows:

5 In addition to penalties that may be imposed under RCW 46.61.5055,  
6 the court may require a person who is convicted of a nonfelony  
7 violation of RCW 46.61.502 or 46.61.504 or who enters a deferred  
8 prosecution program under RCW 10.05.020 based on a nonfelony violation  
9 of RCW 46.61.502 or 46.61.504, to attend an educational program  
10 focusing on the emotional, physical, and financial suffering of victims  
11 who were injured by persons convicted of driving while under the  
12 influence of intoxicants.

13 **Sec. 18.** RCW 46.61.5151 and 1995 c 332 s 15 are each amended to  
14 read as follows:

15 A sentencing court may allow (~~(persons))~~ a person convicted of  
16 (~~(violating))~~ a nonfelony violation of RCW 46.61.502 or 46.61.504 to  
17 fulfill the terms of the sentence provided in RCW 46.61.5055 in  
18 nonconsecutive or intermittent time periods. However, any mandatory  
19 minimum sentence under RCW 46.61.5055 shall be served consecutively  
20 unless suspended or deferred as otherwise provided by law.

21 NEW SECTION. **Sec. 19.** This act takes effect July 1, 2007."

**HB 3317** - S COMM AMD  
By Committee on Judiciary

**ADOPTED AS AMENDED 03/07/06**

22 On page 1, line 3 of the title, after "drug;" strike the remainder  
23 of the title and insert "amending RCW 46.61.502, 46.61.504, 46.61.5055,  
24 9.94A.030, 9.94A.640, 9.94A.650, 9.94A.660, 9.94A.690, 13.40.0357,  
25 46.20.311, 46.61.524, 46.61.5152, and 46.61.5151; reenacting and  
26 amending RCW 9.94A.505, 9.94A.525, 9.94A.515, and 9.94A.411; adding a  
27 new section to chapter 9.94A RCW; prescribing penalties; and providing

1 an effective date."

--- END ---